

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:10cr485
	.	
vs.	.	Alexandria, Virginia
	.	January 13, 2015
JEFFREY ALEXANDER STERLING,	.	10:00 a.m.
	.	
Defendant.	.	
	.	
.	

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

VOLUME I

APPEARANCES:

FOR THE GOVERNMENT:	JAMES L. TRUMP, AUSA DENNIS M. FITZPATRICK, AUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314 and ERIC G. OLSHAN, Deputy Chief Public Integrity Section of the Criminal Division United States Department of Justice 1400 New York Avenue, N.W. Suite 12100 Washington, D.C. 20005
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FOR THE DEFENDANT:	EDWARD B. MAC MAHON, JR., ESQ. Law Office of Edward B. MacMahon, Jr. 107 East Washington Street P.O. Box 25 Middleburg, VA 20118
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(APPEARANCES CONT'D. ON FOLLOWING PAGE)

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES: (Cont'd.)

2 FOR THE DEFENDANT:

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Washington, D.C. 20005-5701

3
4
5
6 CLASSIFIED INFORMATION
SECURITY OFFICERS:

CHRISTINE E. GUNNING
MAURA PETERSON

7
8 ALSO PRESENT:

GERARD FRANCISCO
SA ASHLEY HUNT
JENNIFER MULLIN, ESQ.

9
10 OFFICIAL COURT REPORTER:

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U.S. District Court, Fifth Floor
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

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I N D E X

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	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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WITNESSES ON BEHALF OF
THE GOVERNMENT:

Stephen B.	175	192		
Laurie D.	198	210	219	
Zach W.	220	259	274	

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1 P R O C E E D I N G S

2 (Defendant and Prospective Jurors present.)

3 THE CLERK: Criminal Case 10-485, United States of
4 America v. Jeffrey Alexander Sterling. This case comes on for
5 trial by jury. Would counsel please note their appearances for
6 the record.

7 MR. TRUMP: Good morning, Your Honor. Jim Trump on
8 behalf of the United States.

9 MR. OLSHAN: Good morning, Your Honor. Eric Olshan
10 on behalf of the United States.

11 MR. FITZPATRICK: Good morning, Your Honor. Dennis
12 Fitzpatrick on behalf of the United States.

13 THE COURT: Good morning.

14 MR. MAC MAHON: Good morning, Your Honor. Edward
15 MacMahon for Mr. Sterling.

16 MR. POLLACK: Good morning, Your Honor. Barry
17 Pollack for Mr. Sterling.

18 MS. HAESSLY: Good morning, Your Honor. Mia Haessly
19 for Mr. Sterling.

20 THE COURT: Good morning.

21 All right, ladies and gentlemen, you've been
22 summonsed to court today to be considered for service on a jury
23 that is going to hear a criminal case, and our first order of
24 business is to call attendance. So when you hear your name
25 called, would you please stand and just say "here" or

1 "present"? Then you may sit.

2 THE CLERK: No. 1, Maridel Anderson.

3 THE PROSPECTIVE JUROR: Here.

4 THE CLERK: Juror No. 2, David Anderson.

5 THE PROSPECTIVE JUROR: Here.

6 THE CLERK: Juror No. 3, Matthew Balser.

7 THE PROSPECTIVE JUROR: Here.

8 THE CLERK: Juror No. 4, Ross Banfield.

9 THE PROSPECTIVE JUROR: Present.

10 THE CLERK: Juror No. 5, Donna Beitzel.

11 THE PROSPECTIVE JUROR: Present.

12 THE CLERK: Juror No. 6, Laura Billings.

13 THE PROSPECTIVE JUROR: Here.

14 THE CLERK: Juror No. 7, Kathy Boykin.

15 (No response.)

16 THE CLERK: Kathy Boykin.

17 (No response.)

18 THE CLERK: Juror No. 8, Kelsey Brosnahan.

19 THE PROSPECTIVE JUROR: Here.

20 THE CLERK: Juror No. 9, Norman Brown.

21 THE PROSPECTIVE JUROR: Here.

22 THE CLERK: Juror No. 10, Amelie Cagle.

23 THE PROSPECTIVE JUROR: Here.

24 THE CLERK: Juror No. 11, James Carnes.

25 THE PROSPECTIVE JUROR: Here.

1 THE CLERK: Juror No. 12, Anne Cassidy.

2 THE PROSPECTIVE JUROR: Here.

3 THE CLERK: Juror No. 13, Arthur Catterall.

4 THE PROSPECTIVE JUROR: Here.

5 THE CLERK: Juror No. 14, Chanhmaly Chaleunrath.

6 (No response.)

7 THE CLERK: Chanhmaly Chaleunrath.

8 (No response.)

9 THE CLERK: Juror No. 15, Harish Cherukuri.

10 THE PROSPECTIVE JUROR: Here.

11 THE CLERK: Juror No. 16, Gabriel Chu.

12 THE PROSPECTIVE JUROR: Here.

13 THE CLERK: Juror No. 17, Janice Connally.

14 (No response.)

15 THE CLERK: Janice Connally.

16 (No response.)

17 THE CLERK: Juror No. 18, Jan Cunningham.

18 (No response.)

19 THE CLERK: Jan Cunningham.

20 (No response.)

21 THE CLERK: Juror No. 19, Donna Curtin.

22 THE PROSPECTIVE JUROR: Here.

23 THE CLERK: Juror No. 20, Michelle Dade.

24 (No response.)

25 THE CLERK: Michelle Dade.

1 (No response.)

2 THE CLERK: Juror No. 21, Chiraphan Davis.

3 (No response.)

4 THE CLERK: Chiraphan Davis.

5 (No response.)

6 THE CLERK: Juror No. 22, Charles Davis.

7 THE PROSPECTIVE JUROR: Here.

8 THE CLERK: Juror No. 23, Steven Dike.

9 (No response.)

10 THE CLERK: Steven Dike.

11 (No response.)

12 THE CLERK: Juror No. 24, Nouredidine Elabassi.

13 THE PROSPECTIVE JUROR: Here.

14 THE CLERK: Juror No. 25, Bernard Engel.

15 THE PROSPECTIVE JUROR: Here.

16 THE CLERK: Juror No. 26, Gregory Fabian.

17 THE PROSPECTIVE JUROR: Here.

18 THE CLERK: Juror No. 27, Timothy Fitzgibbon.

19 (No response.)

20 THE CLERK: Timothy Fitzgibbon.

21 (No response.)

22 THE CLERK: Juror No. 28, Jovelita Fonseca.

23 THE PROSPECTIVE JUROR: Here.

24 THE CLERK: Juror No. 29, Matthew Friel.

25 THE PROSPECTIVE JUROR: Here.

1 THE CLERK: Juror No. 30, Steven Frith.

2 THE PROSPECTIVE JUROR: Here.

3 THE CLERK: Juror No. 31, Matthew Garofalo.

4 THE PROSPECTIVE JUROR: Here.

5 THE CLERK: Juror No. 32, Diane Gilliam.

6 THE PROSPECTIVE JUROR: Here.

7 THE CLERK: Juror No. 33, Kristi Gilmore.

8 THE PROSPECTIVE JUROR: Here.

9 THE CLERK: Juror No. 34, Kristine Gilson.

10 THE PROSPECTIVE JUROR: Here.

11 THE CLERK: Juror No. 35, Paul Glen.

12 THE PROSPECTIVE JUROR: Here.

13 THE CLERK: Juror No. 36, Nancy Gofus.

14 THE PROSPECTIVE JUROR: Here.

15 THE CLERK: Juror No. 37, Amanda Granlund.

16 THE PROSPECTIVE JUROR: Here.

17 THE CLERK: Juror No. 38, Maxine Greenstein.

18 (No response.)

19 THE CLERK: Maxine Greenstein.

20 (No response.)

21 THE CLERK: Juror No. 39, Cathleen Gregorson.

22 THE PROSPECTIVE JUROR: Here.

23 THE CLERK: Juror No. 40, Kathleen Halasz.

24 THE PROSPECTIVE JUROR: Here.

25 THE CLERK: Juror No. 41, Jennie Hamm.

1 THE PROSPECTIVE JUROR: Here.

2 THE CLERK: Juror No. 42, David Harrison.

3 THE PROSPECTIVE JUROR: Here.

4 THE CLERK: Juror No. 43, Alan Herman.

5 (No response.)

6 THE CLERK: Alan Herman.

7 THE PROSPECTIVE JUROR: Here.

8 THE CLERK: Juror No. 44, Ivan Hernandez.

9 THE PROSPECTIVE JUROR: Here.

10 THE CLERK: Juror No. 45, Alberta Hickey.

11 THE PROSPECTIVE JUROR: Here.

12 THE CLERK: Juror No. 46, Dion Hinchcliffe.

13 (No response.)

14 THE CLERK: Dion Hinchcliffe.

15 (No response.)

16 THE CLERK: Juror No. 47, Charles Hoffman.

17 THE PROSPECTIVE JUROR: Here.

18 THE CLERK: Juror No. 48, Keric Hopkins.

19 THE PROSPECTIVE JUROR: Here.

20 THE CLERK: Juror No. 49, Aaron Hunt.

21 THE PROSPECTIVE JUROR: Here.

22 THE CLERK: Juror No. 50, Dega Hussen.

23 (No response.)

24 THE CLERK: Dega Hussen.

25 (No response.)

1 THE CLERK: Juror No. 51, Andrew Ihle.

2 THE PROSPECTIVE JUROR: Here.

3 THE CLERK: Juror No. 52, Nancy Ingalsbe.

4 THE PROSPECTIVE JUROR: Here.

5 THE CLERK: Juror No. 53, Nika Jani.

6 (No response.)

7 THE CLERK: Nika Jani.

8 (No response.)

9 THE CLERK: Juror No. 54, Leslie Jenson.

10 (No response.)

11 THE CLERK: Leslie Jenson.

12 (No response.)

13 THE CLERK: Juror No. 55, Angela Keaton.

14 THE PROSPECTIVE JUROR: Here.

15 THE CLERK: Juror No. 56, Sozina Khan.

16 THE PROSPECTIVE JUROR: Here.

17 THE CLERK: Juror No. 57, Sandra Khouri.

18 THE PROSPECTIVE JUROR: Here.

19 THE CLERK: Juror No. 58, David Knox.

20 THE PROSPECTIVE JUROR: Here.

21 THE CLERK: Juror No. 59, Steve Lee.

22 THE PROSPECTIVE JUROR: Here.

23 THE CLERK: Juror No. 60, Caitlin Lhommedieu.

24 THE PROSPECTIVE JUROR: Here.

25 THE CLERK: Juror No. 61, Melody Long.

1 (No response.)

2 THE CLERK: Melody Long.

3 (No response.)

4 THE CLERK: 62, Matthew Lowman.

5 THE PROSPECTIVE JUROR: Here.

6 THE CLERK: Juror No. 63, James Lyke.

7 THE PROSPECTIVE JUROR: Here.

8 THE CLERK: Juror No. 64, Peter Lynn, Jr.

9 THE PROSPECTIVE JUROR: Here.

10 THE CLERK: Juror No. 65, George McCool, II.

11 THE PROSPECTIVE JUROR: Here.

12 THE CLERK: Juror No. 66, Peggy McCoy.

13 THE PROSPECTIVE JUROR: Here.

14 THE CLERK: Juror No. 67, Tracy McGull.

15 (No response.)

16 THE CLERK: Tracy McGull.

17 (No response.)

18 THE CLERK: Juror No. 68, Vernon Michelsen, Jr.

19 THE PROSPECTIVE JUROR: Here.

20 THE CLERK: Juror No. 69, Neil Mickelson.

21 THE PROSPECTIVE JUROR: Here.

22 THE CLERK: Juror No. 70, Rebecca Miller.

23 THE PROSPECTIVE JUROR: Here.

24 THE CLERK: Juror No. 71, Amanda Morris.

25 THE PROSPECTIVE JUROR: Here.

1 THE CLERK: Juror No. 72, Sean Mountcastle.

2 (No response.)

3 THE CLERK: Sean Mountcastle.

4 (No response.)

5 THE CLERK: Juror No. 73, Thuong Nguyen.

6 THE PROSPECTIVE JUROR: Here.

7 THE CLERK: Juror No. 74, Scott Oden.

8 THE PROSPECTIVE JUROR: Here.

9 THE CLERK: Juror No. 75, Stephen Pace, Jr.

10 (No response.)

11 THE CLERK: Stephen Pace, Jr.

12 (No response.)

13 THE CLERK: Juror No. 76, Mahesh Panwar.

14 THE PROSPECTIVE JUROR: Here.

15 THE CLERK: Juror No. 77, Nicolas Pedrozo.

16 THE PROSPECTIVE JUROR: Here.

17 THE CLERK: Juror No. 78, Nancy Perry.

18 THE PROSPECTIVE JUROR: Here.

19 THE CLERK: Juror No. 79, Maria Pierce.

20 THE PROSPECTIVE JUROR: Here.

21 THE CLERK: Juror No. 80, Manavi Puri.

22 THE PROSPECTIVE JUROR: Here.

23 THE CLERK: Juror No. 81, Margaret Rowe.

24 THE PROSPECTIVE JUROR: Here.

25 THE CLERK: Juror No. 82, Gloria Roy.

1 THE PROSPECTIVE JUROR: Here.

2 THE CLERK: Juror No. 83, Gregory Scites.

3 THE PROSPECTIVE JUROR: Here.

4 THE CLERK: Juror No. 84, Sidney Shaw.

5 THE PROSPECTIVE JUROR: Here.

6 THE CLERK: Juror No. 85, William Shepard.

7 (No response.)

8 THE CLERK: William Shepard.

9 (No response.)

10 THE CLERK: Juror No. 86, Harriet Shriver.

11 THE PROSPECTIVE JUROR: Here.

12 THE CLERK: Juror No. 87, Teresa Simpson.

13 THE PROSPECTIVE JUROR: Here.

14 THE CLERK: Juror No. 88, Christopher Stanley.

15 THE PROSPECTIVE JUROR: Here.

16 THE CLERK: Juror No. 89, Kim Stenberg.

17 THE PROSPECTIVE JUROR: Here.

18 THE CLERK: Juror No. 90, Yvonne Stephens.

19 THE PROSPECTIVE JUROR: Here.

20 THE CLERK: Juror No. 91, Arthur Stewart.

21 (No response.)

22 THE CLERK: Arthur Stewart.

23 (No response.)

24 THE CLERK: Juror No. 92, George Tobin.

25 THE PROSPECTIVE JUROR: Here.

1 THE CLERK: Juror No. 93, Sheena Tosta.

2 THE PROSPECTIVE JUROR: Here.

3 THE CLERK: Juror No. 94, Lien Ngoc Tran.

4 THE PROSPECTIVE JUROR: Here.

5 THE CLERK: Juror No. 95, Phan Vu.

6 THE PROSPECTIVE JUROR: Here.

7 THE CLERK: Juror No. 96, Edward Waters.

8 (No response.)

9 THE CLERK: Edward Waters.

10 (No response.)

11 THE CLERK: Juror No. 97, Deborah Weigel.

12 (No response.)

13 THE CLERK: Deborah Weigel.

14 (No response.)

15 THE CLERK: Juror No. 98, Debra Williams.

16 THE PROSPECTIVE JUROR: Here.

17 THE CLERK: Juror No. 99, Kristin Witters.

18 THE PROSPECTIVE JUROR: Here.

19 THE CLERK: Juror No. 100, Jessica Wood.

20 THE PROSPECTIVE JUROR: Here.

21 THE CLERK: Juror No. 101, Suzanne Yerks.

22 THE PROSPECTIVE JUROR: Here.

23 THE CLERK: Is there anyone here who's here for jury
24 duty whose name I have not called?

25 (No response.)

1 THE CLERK: Ladies and gentlemen of the jury, would
2 you please stand and raise your right hand.

3 (Prospective Jurors affirmed.)

4 THE COURT: All right, ladies and gentlemen, as I
5 said earlier, you've been summonsed to court today to be
6 considered for service on a jury which is going to consider a
7 criminal case brought by the United States of America against
8 the defendant, Jeffrey Alexander Sterling.

9 Now, if you are chosen to be a juror, you should
10 think about yourself throughout the trial as if you were a
11 judge just like me. I can't give you each a black robe to wear
12 like the one I'm wearing, but I hope you will think of yourself
13 throughout your time as a juror as wearing a black robe.

14 Now, we have an expectation of what we find -- what
15 we think a judge should be when he or she comes into the
16 courtroom. First and foremost, we want a person who comes into
17 the courtroom with an absolutely open mind, with no
18 predispositions, no preconceptions about the issues that he or
19 she has to decide.

20 Obviously, then we need a judge who wouldn't be
21 connected to any of the parties in the case, and so during
22 what's called the voir dire process, which is basically jury
23 selection, I as the presiding judge will be asking all of you a
24 series of questions, and the purpose of these questions is to
25 try to determine which of you would be best suited to sit as a

1 judge in this case.

2 Now, under our American system of law, it is very
3 important for jurors and for judges to keep certain points in
4 mind. First of all, your job as a juror in this case is to
5 judge the issues in this case based solely upon what you see
6 and hear here in the courtroom. That means it's extremely
7 important not to let any outside information affect your
8 thinking process.

9 And because of that concern and because this
10 particular case has had a fair amount of media publicity about
11 it, I'm going to be asking you a series of questions, and as
12 you listen to these questions, I want you to think very
13 carefully about whether or not because of any exposure you may
14 have had to any of the issues surrounding this case, you
15 believe you might have trouble in judging this particular case.

16 Now, when I ask you questions, I'm going to use the
17 word "you," but every question applies not to just you
18 individually but also to any of your immediate family members
19 or extremely close personal friends. So if you believe that
20 you have an answer to any of my questions, the way we proceed
21 is for you to raise your hand.

22 Now, as you can see, we've got a packed courtroom
23 today, and I'm going to have to start by pointing to some of
24 you. I normally start on my left in the first row, and I'll go
25 across the courtroom, and after about the second or third row,

1 I can't tell in the back where you're seated, so I'll just have
2 to point to you. You have to stand up when I do point to you,
3 state your name again, and provide the answer to the question.

4 Now, there may be certain questions that generate a
5 response that you feel is a private or personal response or a
6 response that can't be discussed in the open courtroom. If
7 that is the case, ask to approach the bench. I will then put
8 on (demonstrating) that funny white noise machine, and the
9 purpose of that machine is to block the overall hearing in the
10 courtroom of what we're talking about here at the bench.

11 Now, it's extremely important that whenever we have a
12 bench conference, and that's not just voir dire but during the
13 trial itself, I don't mind if you stand up and stretch, but if
14 you start to talk or rustle papers or whatever, it becomes
15 harder for us to hear at the bench, and so I ask you please to
16 not talk at any -- during any of those bench conferences.

17 Now, let me just tell you very briefly -- and this is
18 a very, very brief overview of what is at issue in this case
19 today. As I said, the United States has charged the defendant,
20 Jeffrey Alexander Sterling, with certain offenses against the
21 United States. These offenses include the unauthorized
22 disclosure of national defense information as well as the
23 retention of -- unlawful retention of national defense
24 information, mail fraud, unauthorized conveyance of government
25 property, and obstruction of justice.

1 These charges arise out of the publication in 2006 of
2 a book entitled *State of War*, written by James Risen, who is a
3 Pulitzer Prize-winning journalist employed by *The New York*
4 *Times*. Specifically, chapter 9 of that book, and it is chapter
5 9 of that book that's at issue in this case, describes a
6 Central Intelligence Agency effort to undermine the progress of
7 Iran's nuclear weapons program by having a person posing as a
8 former Soviet Union nuclear scientist offer to sell nuclear
9 weapon plans to the Iranians. The plans were to appear
10 accurate but would, in fact, contain flaws that would mislead
11 the Iranians.

12 Chapter 9 included classified information about the
13 project and the human asset, that is, the physicist, who will
14 be referred to throughout this trial as Merlin.

15 The defendant, Jeffrey Alexander Sterling, was hired
16 by the Central Intelligence Agency, that is, the CIA, in 1993,
17 and he had a Top Secret clearance as an employee of that
18 agency. From December of 1998 through approximately May of
19 2000, he was one of Merlin's handlers, and he was involved in
20 the Iranian project. His employment with the Central
21 Intelligence Agency ended in or about January 31 of 2002.

22 Now, the government alleges that, that Mr. Sterling
23 provided information to Risen about Merlin and the Iranian
24 project and that that information was classified and he was not
25 authorized to disclose that information. That information was

1 ultimately published in 2006, when the *State of War* book came
2 out. It was published by the publisher Simon & Schuster.

3 The government further alleges that when the leak of
4 the information became apparent, they began a criminal
5 investigation into the leak, and at one point, Mr. Sterling
6 received a grand jury subpoena to appear concerning that
7 investigation and to bring documents with him, and in the
8 obstruction of justice charge, the government alleges that
9 Mr. Sterling destroyed one of the e-mails that would have been
10 relevant to that investigation.

11 Now, Mr. Sterling has entered not guilty pleas to all
12 of the charges in this case, and that means that he begins this
13 case with a presumption of innocence, and the burden will be on
14 the government throughout this trial to prove Mr. Sterling
15 guilty. The burden which the government bears in a criminal
16 case is a burden of proof beyond a reasonable doubt.

17 Those of you who are chosen to be the jurors in this
18 case will have to decide the issues that have been raised by
19 the charges brought by the government and by the denial of
20 those charges by the defendant. You can see that this is a
21 very serious case, and we therefore need very serious and
22 dedicated persons to be the jurors in this case, so I hope you
23 will listen carefully to the voir dire, and if you have any
24 answers or you want to raise any additional issues with the
25 Court that might address your suitability as a juror, that you

1 will let me know.

2 Now, having told you just very briefly what is
3 involved in this case, do any of you believe that you may have
4 seen, heard, read, or in any respect that you might know
5 something about this case? Please raise your hands. Is there
6 anybody in the first row?

7 Yes, ma'am, your name, please? If you'd stand up,
8 tell me your name? Yes.

9 THE PROSPECTIVE JUROR: Harriet Shriver, but just
10 what I read in the newspaper.

11 THE COURT: Wait just one second, ma'am. I've got to
12 get your -- the list of names here.

13 What is your last name?

14 THE PROSPECTIVE JUROR: Shriver.

15 THE COURT: And you spell that with an "F"?

16 THE PROSPECTIVE JUROR: "S" as in Sam.

17 THE COURT: Sorry. Spell your whole last name.

18 THE PROSPECTIVE JUROR: S-h-r-i-v -- as in Victor --

19 THE COURT: Fine, Ms. Shriver. I've got you, all
20 right.

21 And you've, you've seen something about this case in
22 the paper?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: All right. Was that one of the recent
25 articles?

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: Do you feel that there is anything in
3 what you read that could affect your ability to judge this case
4 impartially?

5 THE PROSPECTIVE JUROR: I don't know. I really don't
6 know at this point.

7 THE COURT: You think that there might have been
8 something in the article you read -- was the article about
9 Mr. Risen, the reporter?

10 THE PROSPECTIVE JUROR: Yes, yes.

11 THE COURT: And was it in the --

12 THE PROSPECTIVE JUROR: I don't remember the whole
13 article, to be perfectly honest, and I didn't skim it, but
14 that's my only association with this.

15 THE COURT: Having had that kind of a brief contact
16 with this, some of the subject matter, again, do you think that
17 that could affect how you would judge this case?

18 THE PROSPECTIVE JUROR: I guess not, no.

19 THE COURT: All right, thank you, Ms. Shriver.

20 Anybody else in Ms. Shriver's row?

21 (No response.)

22 THE COURT: Now, in the center section. And I have
23 to point to you.

24 Yes, sir, your name, please?

25 THE PROSPECTIVE JUROR: Jim Carnes, C-a-r-n-e-s.

1 THE COURT: Yes, sir.

2 THE PROSPECTIVE JUROR: I read the same article about
3 the testimony of the --

4 THE COURT: The reporter?

5 THE PROSPECTIVE JUROR: The reporter.

6 THE COURT: And that's all. You did not read
7 anything over the years?

8 THE PROSPECTIVE JUROR: No.

9 THE COURT: Mr. Carnes, is there anything about what
10 you read in that article that you feel might affect your
11 ability to judge this case impartially?

12 THE PROSPECTIVE JUROR: Probably not.

13 THE COURT: All right, thank you, sir.

14 Anyone else in the first row? How about on the side?

15 THE PROSPECTIVE JUROR: Ross --

16 THE COURT: All right, you're the second row, but
17 that's all right. What's your name, sir?

18 THE PROSPECTIVE JUROR: Ross Banfield.

19 THE COURT: How do you spell the last name?

20 THE PROSPECTIVE JUROR: B -- as in boy --
21 a-n-f-i-e-l-d.

22 THE COURT: Yes, Mr. Banfield.

23 THE PROSPECTIVE JUROR: Same article.

24 THE COURT: All right. And again, do you feel in any
25 respect that may have affected how you go about judging this

1 case?

2 THE PROSPECTIVE JUROR: I don't believe so.

3 THE COURT: All right, thank you, sir.

4 In the middle section now, yes, sir, your name,
5 please?

6 THE PROSPECTIVE JUROR: Neil Mickelson, M -- as in
7 Mary -- i-c-k-e-l-s-o-n.

8 THE COURT: I've got it.

9 THE PROSPECTIVE JUROR: Ma'am, I hold a TS/SCI
10 clearance and work for a federal contract in the intelligence
11 community.

12 THE COURT: Have you heard anything about this case
13 through that?

14 THE PROSPECTIVE JUROR: I have, ma'am.

15 THE COURT: Would that affect your ability to judge
16 it impartially, do you feel?

17 THE PROSPECTIVE JUROR: I'm not really sure, ma'am.
18 I will also add that I worked for Booz Allen Hamilton, and one
19 of our former employees was recently subject to a similar
20 disclosure.

21 THE COURT: All right. Now, again, usually when
22 people have known people in this type of a situation, it can
23 affect their impartiality. Do you feel you'd have some
24 difficulties in being impartial in this case?

25 THE PROSPECTIVE JUROR: I don't believe so, ma'am. I

1 don't know any of the personalities in question nor the people
2 in question in either of those cases.

3 THE COURT: All right, thank you, sir.

4 Yes, your name, please?

5 THE PROSPECTIVE JUROR: Juror No. 2, David Anderson.

6 THE COURT: Yes, sir.

7 THE PROSPECTIVE JUROR: I've worked on classified
8 programs since 1990 for mostly three-letter agencies, including
9 the CIA. I am familiar with the -- I read the article and am
10 familiar with the circumstance and discussed it with some
11 colleagues.

12 THE COURT: Do you feel then that you've already made
13 up your mind about issues or that it would be difficult to be
14 impartial in judging this case?

15 THE PROSPECTIVE JUROR: I would work hard to be
16 impartial and just listen to the facts in the case, so I think
17 I can be impartial.

18 THE COURT: All right, thank you, Mr. Anderson.

19 Yes, sir, your name, please?

20 THE PROSPECTIVE JUROR: Bernard Engel. I've read the
21 most recent article, and I believe there were previous articles
22 about the reporter being let off.

23 THE COURT: All right. Now, Mr. Engel, is there
24 anything about what you've read that you feel could affect your
25 impartiality in judging this case?

1 THE PROSPECTIVE JUROR: Well, it raises a few
2 questions about why the government chose to forego the
3 testimony -- or push harder for the testimony from Mr. Risen.

4 THE COURT: All right. And do you feel that that
5 might affect how you'd go about judging this case?

6 THE PROSPECTIVE JUROR: Hard to say. I'd have to
7 hear more.

8 THE COURT: All right, thank you, sir.

9 Anybody on the left side in the second or third rows?

10 (No response.)

11 THE COURT: All right, let me just take the whole
12 left side at this point. Is there anybody on the left side
13 who's had exposure to any of the issues in this case? Anyone
14 in the back?

15 (No response.)

16 THE COURT: All right. In the center, are there any
17 more people? Yes, your name, please?

18 THE PROSPECTIVE JUROR: Cagle, C-a-g-l-e, C -- as in
19 Charlie -- a-g-l-e.

20 THE COURT: Yes, Ms. Cagle.

21 THE PROSPECTIVE JUROR: Similar to the others. Read
22 the article mostly about the reporter, not about the case so
23 much.

24 THE COURT: And do you feel there's anything about
25 what you read in that article that might affect how you'd judge

1 this case?

2 THE PROSPECTIVE JUROR: I don't think so.

3 THE COURT: All right, thank you, Ms. Cagle.

4 Anybody else in the center section?

5 (No response.)

6 THE COURT: How about on the far right? Anybody
7 else?

8 (No response.)

9 THE COURT: All right. Now, have any members of the
10 panel -- to your knowledge, have any of you ever read this book
11 that we've -- the *State of War*?

12 (No response.)

13 THE COURT: Nobody.

14 Have any of you to your knowledge other than the
15 newspaper article you recently read, to your knowledge, have
16 you read other articles by James Risen?

17 (No response.)

18 THE COURT: All right. Have any of you ever been
19 employed by or ever invested in *The New York Times* or Simon &
20 Schuster, the publishing house?

21 (No response.)

22 THE COURT: So none of you have worked for in any
23 capacity *The New York Times* or Simon & Schuster, correct?

24 (No response.)

25 THE COURT: And none of you to your knowledge owns

1 stock in either of those entities?

2 (No response.)

3 THE COURT: All right, I'll have counsel at this
4 point stand up --

5 THE PROSPECTIVE JUROR: Your Honor?

6 THE COURT: I'm sorry. Yes, sir, your name, please?

7 THE PROSPECTIVE JUROR: I own a few shares.

8 THE COURT: No, I need your name first.

9 THE PROSPECTIVE JUROR: Alan Herman, H-e-r-m-a-n.

10 THE COURT: Yes, Mr. Herman. Yes, sir.

11 THE PROSPECTIVE JUROR: I own a few shares of *The New*
12 *York Times*.

13 THE COURT: In any, in any respect, do you feel that
14 might affect how you would judge this case?

15 THE PROSPECTIVE JUROR: Not at all.

16 THE COURT: All right, thank you, sir.

17 Is there anybody else?

18 (No response.)

19 THE COURT: All right, I'll have counsel stand and
20 identify themselves at this time. I'll start with you,
21 Mr. Trump.

22 MR. TRUMP: Good morning. Jim Trump on behalf of the
23 United States.

24 MR. OLSHAN: Good morning. Eric Olshan on behalf of
25 the United States.

1 MR. FITZPATRICK: And Dennis Fitzpatrick on behalf of
2 the United States.

3 THE COURT: And do you want to identify your case
4 agents?

5 MR. OLSHAN: With us today is Special Agent Ashley
6 Hunt from the FBI.

7 THE COURT: Anybody else?

8 MR. OLSHAN: Should we identify other personnel as
9 well?

10 THE COURT: I think all personnel working with the
11 government should be identified.

12 MR. OLSHAN: Jennifer Mullin, who's with the Office
13 of General Counsel at the CIA.

14 THE COURT: All right. And are you going to have a
15 technical person working with you, Mr. Gerard?

16 MR. FITZPATRICK: Yes. Your Honor, we'll also have
17 Gerard Francisco, and perhaps a woman by the name of Pam Benson
18 will be in the courtroom.

19 THE COURT: All right. Ladies and gentlemen, do any
20 of you think you might know in any personal or business
21 capacity any of government's attorneys or the case agents?
22 Anybody?

23 (No response.)

24 THE COURT: You-all may have a seat.

25 Have any members of the panel had any business

1 dealings with the United States Attorney's Office for this
2 district? Yes, sir, your name, please?

3 THE PROSPECTIVE JUROR: Only in the grand jury,
4 serving on the grand jury.

5 THE COURT: All right, your name, sir?

6 THE PROSPECTIVE JUROR: James Carnes, C-a-r-n-e-s.

7 THE COURT: And, Mr. Carnes, when did you serve on
8 the grand jury?

9 THE PROSPECTIVE JUROR: In the late '80s or early
10 '90s.

11 THE COURT: All right, is there anything about that
12 grand jury experience or your working with prosecutors from the
13 U.S. Attorney's Office that might affect your impartiality in
14 judging this case?

15 THE PROSPECTIVE JUROR: No, I don't believe so.

16 THE COURT: All right, thank you, sir.

17 Anybody else? Yes, your name, please?

18 THE PROSPECTIVE JUROR: Suzanne Yerks, Y-e-r-k-s.

19 THE COURT: Yes, Ms. Yerks.

20 THE PROSPECTIVE JUROR: I work for a company named
21 VeriSign, and I've actually seen your name a lot come through
22 on court orders that I handle directly for domain name
23 transcripts and things like that.

24 THE COURT: Ms. Yerks, in any respect, do you feel
25 that that familiarity with the Court or the U.S. Attorney's

1 Office might affect your impartiality?

2 THE PROSPECTIVE JUROR: No.

3 THE COURT: All right, thank you, ma'am.

4 Anybody else?

5 (No response.)

6 THE COURT: All right. Now, have defense -- yes,
7 ma'am, your name, please?

8 THE PROSPECTIVE JUROR: Kris Gilson.

9 THE COURT: How do you spell the last name?

10 THE PROSPECTIVE JUROR: G-i-l-s-o-n.

11 THE COURT: Yes, ma'am.

12 THE PROSPECTIVE JUROR: I work for the federal
13 government and have been involved on the fringe of several
14 court cases with the attorneys, no one that is here in the room
15 or --

16 THE COURT: Which, which agency do you work with?

17 THE PROSPECTIVE JUROR: I work for the Maritime
18 Administration. We're part of DOT.

19 THE COURT: All right. Is there anything about your
20 work with possibly U.S. attorneys that might affect your
21 impartiality?

22 THE PROSPECTIVE JUROR: No, I don't believe so,
23 ma'am.

24 THE COURT: Thank you, Ms. Gilson.

25 THE PROSPECTIVE JUROR: Your Honor, can I also bring

1 up one other thing?

2 THE COURT: Yes, ma'am.

3 THE PROSPECTIVE JUROR: I'm supposed to be heading
4 out of the country for work next week, and I was excused for
5 next week, but I don't want to impact my service here, but I
6 just wanted to bring that up. I don't know how relevant it is.

7 THE COURT: Is that trip -- can that be changed, or
8 is it very difficult to change it?

9 THE PROSPECTIVE JUROR: No, it's with the
10 International Maritime Organization. It's been planned for,
11 you know, a year in advance, and my role is fairly critical as
12 a working group chair.

13 THE COURT: All right, thank you, Ms. Gilson.

14 THE PROSPECTIVE JUROR: Okay.

15 THE PROSPECTIVE JUROR: Your Honor?

16 THE COURT: Yes, ma'am, your name, please?

17 THE PROSPECTIVE JUROR: Nancy Perry.

18 THE COURT: Yes, Ms. Perry.

19 THE PROSPECTIVE JUROR: For full disclosure, I work
20 with general counsel at Northrup Grumman, and we work with the
21 U.S. Attorney's Office. I don't have any close contact, but I
22 just wanted to make sure that you knew.

23 THE COURT: All right. But again, Ms. Perry, do you
24 feel in any respect the work you do with them could affect your
25 impartiality?

1 THE PROSPECTIVE JUROR: No, no.

2 THE COURT: All right, thank you, ma'am.

3 Anybody else?

4 (No response.)

5 THE COURT: All right. Now, I'll have counsel for
6 the defendant as well as Mr. Sterling introduce themselves.

7 MR. MAC MAHON: I am Edward MacMahon. I'm an
8 attorney for Jeffrey Sterling.

9 MR. POLLACK: Good morning. My name is Barry
10 Pollack. I'm also an attorney for Mr. Sterling.

11 THE COURT: Counsel, could you identify the firms and
12 where they're located? I want to know if anybody knows your
13 law firm.

14 MR. MAC MAHON: My office is in Middleburg, Virginia,
15 and Washington, D.C. I'm a sole practitioner.

16 MR. POLLACK: I work in Washington, D.C., for a group
17 called Miller & Chevalier.

18 THE COURT: All right.

19 MS. HAESSLY: Good morning. My name is Mia Haessly,
20 and I also work at Miller & Chevalier in Washington, D.C.

21 THE COURT: And, Mr. Sterling, just introduce
22 yourself.

23 THE DEFENDANT: Jeffrey Sterling, in Missouri.

24 THE COURT: And you work now in Missouri?

25 THE PROSPECTIVE JUROR: I work outside of Los

1 Angeles.

2 THE COURT: All right, you-all may have a seat.

3 Ladies and gentlemen, do any of you think you might
4 know either defense counsel or the defendant in any personal or
5 business capacity? Yes?

6 THE PROSPECTIVE JUROR: My name is Caitlin
7 Lhommedieu, and I'm familiar with Mr. MacMahon, his firm,
8 having worked in the courthouse, but I don't know him
9 personally.

10 THE COURT: All right, what about any of the
11 prosecutors? Do you know any of them?

12 THE PROSPECTIVE JUROR: I'm not familiar with any of
13 them.

14 THE COURT: Is there anything about your familiarity
15 with Mr. MacMahon that you feel might affect your impartiality
16 as a judge in this case?

17 THE PROSPECTIVE JUROR: Not at all.

18 THE COURT: All right, thank you, ma'am.

19 Do any members of the panel believe you may have had
20 any business dealings with either of the two law firms
21 represented by defense counsel or ever have litigated against
22 them or with them?

23 Yes, sir, your name, please?

24 THE PROSPECTIVE JUROR: Arthur Catterall, C.

25 THE COURT: Yes, Mr. Catterall.

1 THE PROSPECTIVE JUROR: I'm an attorney with the
2 Justice Department Tax Division and currently have a case where
3 Miller & Chevalier is on the other side.

4 THE COURT: All right. Now, Mr. Catterall, do you
5 feel in any respect that might make it difficult for you to sit
6 as a juror in this case?

7 THE PROSPECTIVE JUROR: I don't think so.

8 THE COURT: Now, you are an employee of the
9 Department of Justice. Do you feel because the U.S. Attorney's
10 Office is part of that agency, that you might have some
11 orientation to favor that side of the case?

12 THE PROSPECTIVE JUROR: I don't think so.

13 THE COURT: In terms of the Tax Division, that -- is
14 it the Civil or the Criminal Division?

15 THE PROSPECTIVE JUROR: Civil.

16 THE COURT: Civil. Have you had any experience with
17 criminal law?

18 THE PROSPECTIVE JUROR: No, no.

19 THE COURT: Have you always practiced on the civil
20 side of things?

21 THE PROSPECTIVE JUROR: Yes, yes.

22 THE COURT: All right. Do you understand that if you
23 were chosen to be a juror, at the end of the case -- and this
24 applies, frankly, to all the jurors -- I give the law that has
25 to be applied as the jury makes its fact-finding? If I were to

1 state the law a certain way that you might disagree with or
2 think that it's wrong because of what you learned in law school
3 or whatever, can you put aside your personal view of the law
4 and follow that as given by the Court?

5 THE PROSPECTIVE JUROR: Yes, ma'am.

6 THE COURT: All right, thank you, sir.

7 Is there anybody else?

8 (No response.)

9 THE COURT: All right. Now, as I said earlier, this
10 case involves allegations involving among other things the
11 Iranian nuclear weapons program. Also, as several of you have
12 mentioned, there's been a great deal of coverage about
13 Mr. Risen, who is a reporter, and the fact that he has
14 throughout this case asserted what's called a newsman's
15 privilege not to reveal any sources of information for any of
16 his articles. There's also been a great deal of publicity
17 about the Central Intelligence Agency lately.

18 So there's been a lot of news stories circulating
19 about some of the issues or some of the entities or
20 participants in this case. What I want to know is from what
21 any of you may have seen, read, or heard about any of these
22 issues, do you feel that they could somehow contaminate your
23 ability to judge this case impartially based on the information
24 received just inside this courtroom?

25 So is there anybody who feels that because of the

1 nature of some of these issues, that you might have problems
2 being impartial in judging this case?

3 (No response.)

4 THE COURT: No? All right.

5 Do any of you -- I know we already had one or two
6 people who've answered this question, but do any of you have
7 any training in the law, that is, you've attended law school,
8 you work as a paralegal, you are an attorney? I want to know
9 now about any legal training or background that any of you
10 have.

11 So let me start in the first row. Again, anybody on
12 the left side? Anybody on the left side at all?

13 (No response.)

14 THE COURT: So no lawyers or law training there?
15 Okay.

16 How about the center section? Let's see, the first
17 row, yes, sir, your name again, please?

18 THE PROSPECTIVE JUROR: Catterall.

19 THE COURT: Yes, Mr. Catterall. And you're the Tax
20 Division Justice Department attorney.

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: All right, thank you, sir. I think
23 you've already answered my questions.

24 The lady next to you, yes, your name, please?

25 THE PROSPECTIVE JUROR: Peggy McCoy.

1 THE COURT: Yes, Ms. McCoy. Are you an attorney?

2 THE PROSPECTIVE JUROR: I'm an inactive attorney, and
3 right now I'm the director of the Alexandria Bar Association.

4 THE COURT: All right. Now, Ms. McCoy, were you ever
5 in active practice?

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: What kind of practice did you have?

8 THE PROSPECTIVE JUROR: I did civil litigation
9 primarily, professional liability defense, with more of a focus
10 on medical malpractice.

11 THE COURT: All right. And now you're the executive
12 director of the Alexandria Bar. Is there anything first of all
13 about your previous work as an attorney or your current work as
14 the executive director of the Bar that you feel could affect
15 your impartiality in judging this case?

16 THE PROSPECTIVE JUROR: No.

17 THE COURT: You didn't practice any criminal law?

18 THE PROSPECTIVE JUROR: No.

19 THE COURT: All right. Again, can you follow the
20 Court's instructions even if you disagree with the Court's
21 proposition of a particular point of law?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: All right, thank you, Ms. McCoy.

24 Anybody else in the center section? Let me start on
25 the aisle. Your name, sir? Yes, yes, sir.

1 THE PROSPECTIVE JUROR: Bernard Engel.

2 THE COURT: Yes, Mr. Engel.

3 THE PROSPECTIVE JUROR: I'm not sure if it counts,
4 but after retirement from the federal government, I worked for
5 several years as a court reporter.

6 THE COURT: Oh, as a court reporter.

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: Did you ever cover anything in this
9 courthouse?

10 THE PROSPECTIVE JUROR: No, no. Strictly, you know,
11 county, Fairfax.

12 THE COURT: Did you cover both civil and criminal
13 matters?

14 THE PROSPECTIVE JUROR: Primarily civil.

15 THE COURT: All right. Is there anything about your
16 work as a court reporter that you feel might affect your
17 impartiality?

18 THE PROSPECTIVE JUROR: I've seen good attorneys and
19 bad attorneys.

20 (Laughter.)

21 THE COURT: Very good. There are only good attorneys
22 in this courtroom; let me assure you.

23 (Laughter.)

24 THE COURT: And, I'm sorry, can you just spell your
25 last name for me?

1 THE PROSPECTIVE JUROR: E-n-g-e-l.

2 THE COURT: All right, thank you, Mr. Engel.

3 There were more people in Mr. Engel's row. Yes, your
4 name, please? Yes, sir.

5 THE PROSPECTIVE JUROR: I'm Gabriel Chu.

6 THE COURT: Yes, Mr. Chu.

7 THE PROSPECTIVE JUROR: I work as a patent examiner.
8 I trained in patent law.

9 THE COURT: So you're right next door?

10 THE PROSPECTIVE JUROR: Exactly.

11 THE COURT: All right. Now, Mr. Chu, obviously, you
12 did take criminal law when you were in law school.

13 THE PROSPECTIVE JUROR: Oh, no, I'm not an attorney.

14 THE COURT: You're a patent examiner. All right,
15 that's fine.

16 Is there anything about your work in that field that
17 you feel might affect your impartiality?

18 THE PROSPECTIVE JUROR: No.

19 THE COURT: All right, thank you, sir.

20 Yes, your name?

21 MS. LHOMMEDIEU: Caitlin Lhommedieu, and I am a civil
22 litigator from Roeder & Cochran in Tysons. I've had no
23 criminal experience.

24 THE COURT: You were a law clerk, however, in this
25 courthouse.

1 THE PROSPECTIVE JUROR: I was a law clerk in this
2 courthouse.

3 THE COURT: All right. So you were exposed to some
4 criminal law in that respect.

5 THE PROSPECTIVE JUROR: I don't even remember any,
6 but I primarily focused my attention on the civil matters, and
7 if I had time, I might sometimes go see a criminal matter just
8 to learn about it, but I know nothing about criminal law.

9 THE COURT: All right. Ms. Lhommedieu, do you
10 believe in any respect that your experience as an attorney and
11 your experience with this Court as a law clerk for one of the
12 magistrate judges in any respect could affect your
13 impartiality?

14 THE PROSPECTIVE JUROR: Not at all.

15 THE COURT: Thank you, ma'am.

16 Any more folks in the center section with legal
17 training background or work in the legal field?

18	(No response.)
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19 THE COURT: How about on the side? Anybody?

20 Yes, ma'am, your name, please?

21 THE PROSPECTIVE JUROR: Kris Gilson.

22 THE COURT: All right, Ms. Gilson, I think I don't
23 need to hear further from you, but thank you.

24 THE PROSPECTIVE JUROR: Okay.

25 THE COURT: Anybody else? Way in the back. Yes,

1 your name, please?

2 THE PROSPECTIVE JUROR: Alan Herman.

3 THE COURT: Yes, Mr. Herman.

4 THE PROSPECTIVE JUROR: I'm retired from the U.S. Air
5 Force. 1980, I was a judge advocate in the Air Force. After
6 that, I was a clerk at the D.C. Court of Appeals for six years,
7 not federal court but local court, and I have -- I just retired
8 from essentially a legal services job with Legal Counsel for
9 the Elderly in D.C.

10 THE COURT: With -- I assume you've had some exposure
11 to criminal cases then.

12 THE PROSPECTIVE JUROR: Back when I was in the Air
13 Force, very early on, I prosecuted and defended cases, and I
14 was a military appellate judge for five years, from '75 to
15 1980.

16 THE COURT: So you've been on both sides of the
17 criminal justice system, so to speak.

18 THE PROSPECTIVE JUROR: Yes, I have.

19 THE COURT: All right, very good. Is there anything
20 about those experiences that you feel might affect your ability
21 to be impartial in judging this case?

22 THE PROSPECTIVE JUROR: No, ma'am.

23 THE COURT: Thank you, Mr. Herman.

24 Anybody else?

25 (No response.)

1 THE COURT: Have any members of the pool ever worked
2 as or trained to be a journalist or a reporter for any form of
3 media, whether we're talking print media, electronic media?
4 Anybody?

5 (No response.)

6 THE COURT: So nobody here has any reporting
7 experience? I'm not talking about your high school newspaper,
8 but, I mean, seriously as a profession.

9 Yes, your name, please?

10 THE PROSPECTIVE JUROR: Brown, B-r-o-w-n.

11 THE COURT: Yes, sir.

12 THE PROSPECTIVE JUROR: Way back in the day, I did
13 sports reporting. I haven't done anything for 20 --

14 THE COURT: I'm sorry, you did some reporting --

15 THE PROSPECTIVE JUROR: Sports reporting for a local
16 newspaper.

17 THE COURT: All right. Mr. Brown, is there anything
18 about that experience that you feel could affect your
19 impartiality in this case?

20 THE PROSPECTIVE JUROR: Not at all.

21 THE COURT: All right, thank you, sir.

22 And over here, yes, your name, please?

23 THE PROSPECTIVE JUROR: Matt Garofalo.

24 THE COURT: Can you spell the last name?

25 THE PROSPECTIVE JUROR: G-a-r-o-f-a-l-o.

1 THE COURT: Yes, sir.

2 THE PROSPECTIVE JUROR: I had an internship my senior
3 year in college with *The Richmond Times* as a dispatch reporter.

4 THE COURT: All right. And as part of that
5 internship, did you do any kind of investigative work?

6 THE PROSPECTIVE JUROR: I wouldn't consider it
7 investigative. More a research.

8 THE COURT: All right. Did you have any training in
9 the ethics of journalism and how one goes about doing
10 investigative reporting, anything like that?

11 THE PROSPECTIVE JUROR: No.

12 THE COURT: Is there anything about your experience
13 in that internship that you think could affect your
14 impartiality in judging this case?

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: All right, thank you, sir.

17 Anybody else? Yes, your name, please?

18 THE PROSPECTIVE JUROR: Nancy Gofus.

19 THE COURT: All right.

20 THE PROSPECTIVE JUROR: I spent two summers as an
21 intern with *The Virginia Pilot* in Norfolk, Virginia.

22 THE COURT: And again, did you do any kind of
23 investigative reporting?

24 THE PROSPECTIVE JUROR: No, not at all. I just
25 worked in the library.

1 THE COURT: Is there anything about your experience
2 with that paper that you feel might affect your impartiality in
3 judging this case?

4 THE PROSPECTIVE JUROR: Not at all.

5 THE COURT: All right, thank you, ma'am.

6 Anybody else?

7	(No response.)
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8 THE COURT: Have any members of the panel ever had
9 any business dealings with or worked for the Central
10 Intelligence Agency, any other federal intelligence agency or
11 department? And that would include any Congressional
12 intelligence-related committees. So I want to know now if any
13 of you have had that kind of experience. And if for any reason
14 you can't discuss it openly, then approach the bench.

15	All right, starting in the first row, your name, sir?
16	Yeah.

17 THE PROSPECTIVE JUROR: I'm sorry, Paul Glen. I was
18 Juror No. 35.

19 THE COURT: Yes, Mr. Glen.

20 THE PROSPECTIVE JUROR: Okay. I'm a retired
21 counterintelligence officer and also a former chief of
22 intelligence for -- counterintelligence for Central Admin.
23 Currently work with DIA.

24 THE COURT: All right. So it's military background
25 in intelligence.

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: All right. Now, Mr. Glen, given the
3 issues in this case, do you feel that you would have any
4 difficulty in being impartial in judging this case?

5 THE PROSPECTIVE JUROR: None.

6 THE COURT: In your work, did you ever have to work
7 on any issues involving leaks of classified information?

8 THE PROSPECTIVE JUROR: Yes, ma'am.

9 THE COURT: And you acted as what, an investigator in
10 those matters?

11 THE PROSPECTIVE JUROR: I acted as an investigator.

12 THE COURT: Do you feel in any respect because you've
13 been involved in this type of an investigation, that that could
14 affect how you would judge this case?

15 THE PROSPECTIVE JUROR: No, ma'am.

16 THE COURT: All right, thank you, sir.

17 Yes, your name?

18 THE PROSPECTIVE JUROR: James Carnes. I was a
19 federal civil servant in the Department of Defense, Office of
20 the Secretary of Defense. I was the consumer of CIA
21 information.

22 THE COURT: So you're familiar with classification
23 issues and that sort of things.

24 THE PROSPECTIVE JUROR: Yes, ma'am.

25 THE COURT: Now, Mr. Carnes, is there anything about

1 that experience that you feel could make it difficult for you
2 to be impartial in judging this case?

3 THE PROSPECTIVE JUROR: No.

4 THE COURT: In that position, did you ever -- were
5 you ever involved in any kind of leak investigation?

6 THE PROSPECTIVE JUROR: No.

7 THE COURT: Either as an investigator, a witness, or
8 anything like that?

9 THE PROSPECTIVE JUROR: No, ma'am.

10 THE COURT: All right. And again, you don't feel
11 that that former work would in any respect affect your
12 impartiality?

13 THE PROSPECTIVE JUROR: No.

14 THE COURT: All right, thank you, Mr. Carnes.

15 All right, is there anybody else in the first row?
16 Yes, ma'am, your name, please?

17 THE PROSPECTIVE JUROR: Peggy McCoy, and my father
18 worked for the Defense Intelligence Agency for 25 years.

19 THE COURT: All right. And I assume he didn't tell
20 you a whole lot about his work.

21 THE PROSPECTIVE JUROR: No.

22 THE COURT: Is there anything, though, about him
23 having had that kind of a job that you feel could affect your
24 impartiality?

25 THE PROSPECTIVE JUROR: No.

1 THE COURT: To your knowledge, was he ever involved
2 in any kind of leak investigation as an investigator or as a
3 witness or anything like that?

4 THE PROSPECTIVE JUROR: As far as leaks, I wouldn't
5 know, but classified information, I'm sure that he dealt with
6 that.

7 THE COURT: All right, thank you, Ms. McCoy.
8 Yes, your name, please?

9 THE PROSPECTIVE JUROR: David Knox, K-n-o-x.

10 THE COURT: Yes, sir.

11 THE PROSPECTIVE JUROR: I currently hold a TS/SCI
12 clearance supporting the intelligence community for a federal
13 contractor.

14 THE COURT: All right, sir. Do you feel in any
15 respect that that work, that position could affect your ability
16 to be impartial in judging this case?

17 THE PROSPECTIVE JUROR: It would not.

18 THE COURT: It would not? Have you ever been
19 involved in any kind of a leak investigation either as a
20 witness, as an investigator, as a subject?

21 THE PROSPECTIVE JUROR: No, ma'am.

22 THE COURT: No? All right, thank you, Mr. Knox.
23 All right, is that everybody in the first row?

24 (No response.)

25 THE COURT: All right, now in the second row. Yes --

1 I should start to know some of your names. I'm sorry I don't.
2 Yes, sir, on the aisle. Yeah.

3 THE PROSPECTIVE JUROR: Bernard Engel. I was a court
4 service officer for the Department of State and worked with
5 agency personnel, agency fraud at various agencies involved.

6 THE COURT: Were you ever involved in any leak
7 investigations?

8 THE PROSPECTIVE JUROR: No.

9 THE COURT: Have you ever been a witness or ever had
10 to be involved in anything close to this kind of a case?

11 THE PROSPECTIVE JUROR: No.

12 THE COURT: And again, Mr. Engel, is there anything
13 about your experience with the State Department that you feel
14 might affect your impartiality in judging this case?

15 THE PROSPECTIVE JUROR: I don't believe so.

16 THE COURT: All right, thank you, Mr. Engel.
17 Yes, your name, please?

18 THE PROSPECTIVE JUROR: David Anderson.

19 THE COURT: Yes, Mr. Anderson.

20 THE PROSPECTIVE JUROR: As I stated earlier, I've
21 worked on classified programs and new business proposals for
22 the CIA since about 1990.

23 THE COURT: And you're a contractor?

24 THE PROSPECTIVE JUROR: I am, yes, a contractor;
25 that's correct.

1 THE COURT: All right. Again, is there anything
2 about that work on classified materials that you think could
3 affect your impartiality in judging this case?

4 THE PROSPECTIVE JUROR: I don't believe so.

5 THE COURT: Have you ever been involved in any kind
6 of a leak investigation either because you had to be a witness,
7 you had to investigate it, or you were the subject of one?

8 THE PROSPECTIVE JUROR: No.

9 THE COURT: All right, thank you, Mr. Anderson.
10 Yes, your name, please?

11 THE PROSPECTIVE JUROR: Neil Mickelson, ma'am.

12 THE COURT: Yes, sir.

13 THE PROSPECTIVE JUROR: Ma'am, I currently hold a
14 TS/SCI clearance as a federal government contractor --

15 THE COURT: Wait, slow just one second.

16 All right, yes, Mr. Mickelson.

17 THE PROSPECTIVE JUROR: Okay. I hold a TS/SCI
18 clearance currently as a federal contractor with the National
19 Reconnaissance Office. I also served in active duty with the
20 Air Force and hold an SCI clearance with the NRO.

21 THE COURT: All right. And again, do you feel in any
22 respect that those positions or having that kind of a clearance
23 would affect your impartiality in judging this case?

24 THE PROSPECTIVE JUROR: No.

25 THE COURT: Have you ever been involved in any kind

1 of a leak investigation either as an investigator, as a
2 witness, or even a possible subject?

3 THE PROSPECTIVE JUROR: No, ma'am.

4 THE COURT: All right, thank you, Mr. Mickelson.
5 Yes, your name, please?

6 THE PROSPECTIVE JUROR: Nancy Gofus. And my daughter
7 works at the CIA.

8 THE COURT: All right. Is there -- I doubt she tells
9 you much about her work --

10 THE PROSPECTIVE JUROR: Not at all.

11 THE COURT: -- but is there anything about her
12 employment with that agency, I mean, the fact that you have a
13 family member working for that agency, that you'd feel could
14 affect your impartiality in judging this case?

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: Thank you, Ms. Gofus.

17 All right, over -- yes, next to you, yes, your name,
18 please?

19 THE PROSPECTIVE JUROR: Alberta Hickey.

20 THE COURT: All right, one second, Ms. Hickey.
21 Yes, ma'am.

22 THE PROSPECTIVE JUROR: I currently have TS/SCI
23 clearances, and I have worked in the past on CIA contracts for
24 a government contractor.

25 THE COURT: All right. Now, Ms. Hickey, do you feel

1 in any respect because you have those clearances or you do that
2 kind of work, that you might have difficulty in being impartial
3 in judging this case?

4 THE PROSPECTIVE JUROR: No.

5 THE COURT: Have you ever been involved in any kind
6 of a leak investigation either as an investigator, as a
7 witness, or as a possible suspect?

8 THE PROSPECTIVE JUROR: No.

9 THE COURT: All right, thank you, Ms. Hickey.
10 How about on the side? Yes, sir, your name, please?

11 THE PROSPECTIVE JUROR: Hi, good morning. David
12 Harrison.

13 THE COURT: Yes, Mr. Harrison.

14 THE PROSPECTIVE JUROR: I work for a government
15 contractor and hold an active clearance that works closely with
16 the CIA. I do not personally, but the contract does.

17 THE COURT: I'm sorry, did you say that you have a
18 clearance?

19 THE PROSPECTIVE JUROR: I do have a clearance, yes,
20 ma'am, Top Secret.

21 THE COURT: All right. Now, have you ever been
22 involved in any kind of a leak investigation?

23 THE PROSPECTIVE JUROR: No, ma'am.

24 THE COURT: Ever been a witness or anything like
25 that?

1 THE PROSPECTIVE JUROR: No, ma'am.

2 THE COURT: And is there anything about your having a
3 clearance or working with intelligence agencies that you feel
4 could affect your impartiality in this case?

5 THE PROSPECTIVE JUROR: No, ma'am.

6 THE COURT: All right, thank you, Mr. Harrison.
7 Since I'm look at the right side, anybody else on the right
8 side?

9 Yes, sir, on the aisle. Your name, please?

10 THE PROSPECTIVE JUROR: I'm Steve Frith. I'm a
11 retired Army military intelligence officer, and I am currently
12 a contractor supporting the intelligence community.

13 THE COURT: Is that the military intelligence
14 community or civilian?

15 THE PROSPECTIVE JUROR: It's three-letter agencies.

16 THE COURT: All right. Mr. Frith, is there anything
17 about your having that kind of a clearance or the kind of work
18 you do that you feel could affect your impartiality in judging
19 this case?

20 THE PROSPECTIVE JUROR: No, ma'am.

21 THE COURT: Have you ever been part of a leak
22 investigation either as an investigator, as a witness, or as a
23 subject?

24 THE PROSPECTIVE JUROR: No, ma'am.

25 THE COURT: All right, thank you, Mr. Frith.

1 Anybody else on the right side? Way in the back,
2 anyone?

3 (No response.)

4 THE COURT: Back to the center section, anybody else?
5 Yes, your name, please? Way in the back.

6 THE PROSPECTIVE JUROR: Steve Lee. I currently work
7 for a federal contractor and currently hold an active security
8 clearance.

9 THE COURT: All right. And, Mr. Lee, is there
10 anything about your having that kind of a clearance or that
11 kind of work that you feel could affect your impartiality in
12 judging this?

13 THE PROSPECTIVE JUROR: No, ma'am.

14 THE COURT: All right. Have you ever been involved
15 in a leak investigation as an investigator, as a possible
16 witness, or suspect?

17 THE PROSPECTIVE JUROR: I have not, ma'am.

18 THE COURT: All right, thank you, Mr. Lee.
19 Yes, your name, please?

20 THE PROSPECTIVE JUROR: Peter Lynn, L-y-n-n.

21 THE COURT: Yes, sir.

22 THE PROSPECTIVE JUROR: I worked for the Department
23 of Navy from '86 to 2001 in the intelligence community.

24 THE COURT: Are you currently doing any work in the
25 intelligence community?

1 THE PROSPECTIVE JUROR: I am not.

2 THE COURT: Mr. Lynn, was there anything about that
3 work that you feel could affect your impartiality as a judge in
4 this case?

5 THE PROSPECTIVE JUROR: No.

6 THE COURT: Were you ever part of any kind of a leak
7 investigation as an investigator, a witness, or even possibly a
8 subject?

9 THE PROSPECTIVE JUROR: I was not.

10 THE COURT: All right, thank you, Mr. Lynn.

11 Anybody else? Way on the side, yes.

12 THE PROSPECTIVE JUROR: My name is Debra Williams.
13 I'm an intelligence research specialist with the Department of
14 Homeland Security, but I do sit at CIA headquarters.

15 THE COURT: All right. And, Ms. Williams, is there
16 anything about your work both in the intelligence world and
17 with the CIA that you feel could affect your impartiality in
18 this case?

19 THE PROSPECTIVE JUROR: No, ma'am.

20 THE COURT: Have you ever been involved in any kind
21 of a leak investigation as an investigator, a witness, or
22 possibly a suspect?

23 THE PROSPECTIVE JUROR: I have not.

24 THE COURT: All right, thank you, Ms. Williams.

25 I think we had another hand. Yes, ma'am, your name

1 again, please?

2 THE PROSPECTIVE JUROR: Harriet Shriver.

3 THE COURT: Yes, Ms. Shriver.

4 THE PROSPECTIVE JUROR: Just that I interviewed and
5 was offered a job with the CIA years ago, never worked for
6 them.

7 THE COURT: Is there anything about that situation
8 that you feel could affect your impartiality?

9 THE PROSPECTIVE JUROR: I don't think so.

10 THE COURT: All right, thank you, Ms. Shriver.
11 Anybody else?

12 (No response.)

13 THE COURT: Have any members of the panel -- and
14 remember, this applies as well to your immediate family members
15 or close personal friends -- ever filed either a formal or
16 informal employment discrimination claim or felt that you had
17 been the victim of discrimination by your employer, whether the
18 employer was a private entity or the federal government?

19 Yes, ma'am, your name, please?

20 THE PROSPECTIVE JUROR: My name is Donna Curtin,
21 Juror No. 19.

22 THE COURT: Yes, ma'am.

23 THE PROSPECTIVE JUROR: It was my father. It was a
24 long time ago, and he did file suit for age discrimination.

25 THE COURT: And against, was it a private entity?

1 THE PROSPECTIVE JUROR: It was a private firm.

2 THE COURT: And how was that matter resolved, if you
3 know?

4 THE PROSPECTIVE JUROR: I believe it was resolved out
5 of court, and I think he was, he was given damages.

6 THE COURT: All right. Is there anything about that
7 case that you feel might affect your impartiality? And the
8 reason I mention that is there may be evidence in this case
9 that at one point, Mr. Sterling raised a discrimination claim
10 against the Central Intelligence Agency. So we want to make
11 sure that any jurors who might have had experience with that
12 sort of an issue have thought about it and whether that could
13 affect their impartiality.

14 Do you feel in any respect your father's experience
15 might affect how you would judge this case?

16 THE PROSPECTIVE JUROR: I don't think so.

17 THE COURT: All right, thank you, ma'am.

18 THE PROSPECTIVE JUROR: You're welcome.

19 THE COURT: Is there anybody else? Nope?

20 Way in the back, yes, your name, please?

21 THE PROSPECTIVE JUROR: George-Ann Tobin.

22 THE COURT: Yes, Ms. Tobin.

23 THE PROSPECTIVE JUROR: I've worked for the National
24 Gallery of Art, and one of the things that I do, I'm the senior
25 official on all sorts of employment litigation, things with the

1 gallery, and some of those have been about employment
2 discrimination, so I have testified before the Merit Service
3 Review Board.

4 THE COURT: All right. So you've had some experience
5 with those types of matters although you haven't actually filed
6 one.

7 THE PROSPECTIVE JUROR: Correct.

8 THE COURT: Well, let me just ask you, is there
9 anything about your work in employment discrimination matters
10 that you feel could affect your impartiality in judging this
11 case?

12 THE PROSPECTIVE JUROR: No.

13 THE COURT: All right, thank you, ma'am.
14 Anybody else?

15 (No response.)

16 THE COURT: Let me just follow up on that question.
17 Have any of you worked in the area of human resources such that
18 you've handled employment discrimination claims? Anybody?

19 On the aisle, yes, sir, your name, please?

20 THE PROSPECTIVE JUROR: Ross Banfield.

21 THE COURT: I need you to stand up, sir, because it's
22 hard to hear you. All right, Mr. Banfield, what kind of work
23 have you done in that area?

24 THE PROSPECTIVE JUROR: I was sued for
25 discrimination. I'm an employer.

1 THE COURT: All right. And how did that work out?

2 THE PROSPECTIVE JUROR: It was dismissed.

3 THE COURT: It was dismissed. Is there anything
4 about your experience in that respect that you feel could
5 affect your impartiality in judging this case?

6 THE PROSPECTIVE JUROR: No.

7 THE COURT: All right, thank you, Mr. Banfield.
8 Yes, your name, sir?

9 THE PROSPECTIVE JUROR: David Anderson.

10 THE COURT: Yes, sir.

11 THE PROSPECTIVE JUROR: I worked as a business
12 conduit officer within the corporation, which looked at a lot
13 of discrimination type of issues brought forward through the
14 open line.

15 THE COURT: Is there anything about that work that
16 you feel might affect your impartiality in judging this case?

17 THE PROSPECTIVE JUROR: No.

18 THE COURT: All right, thank you, sir.

19 Anybody else? Yes, your name, please?

20 THE PROSPECTIVE JUROR: Cagle, C-a-g-l-e.

21 THE COURT: Yes, Ms. Cagle.

22 THE PROSPECTIVE JUROR: My husband was a human
23 resources executive, but we're second time around. We weren't
24 married during that time.

25 THE COURT: All right. Is there anything about

1 things he may have told you about that work that could affect
2 your impartiality?

3 THE PROSPECTIVE JUROR: No.

4 THE COURT: Thank you, ma'am.

5 Anybody else?

6 (No response.)

7 THE COURT: Now, some of the witnesses who are going
8 to testify in this case are either current or former employees
9 of the Central Intelligence Agency, and because of sensitivity
10 of their type of work, they may be testifying only using their
11 initials, and there may be -- and there will be some protective
12 measures taken so that these people's identity is not known to
13 the general public. In fact, during the trial, we will have a
14 fairly large screen across the well of the court so that the
15 jurors will be able to see the witness but not the general
16 public.

17 We are also going to have pieces of evidence, that
18 is, documentary evidence which at some point may have been
19 classified, and for various reasons, portions of that evidence
20 may have what are called redactions. That means portions may
21 be blacked out for sensitivity and security reasons.

22 Do any of you feel that those types of protective
23 measures might somehow make it difficult for you to be
24 impartial in judging this case? Is there anyone?

25 (No response.)

1 THE COURT: Do you feel you would have trouble in
2 evaluating the credibility of a witness who when he or she
3 testified was not giving you their full name? Is there anybody
4 who would be troubled by that?

5 (No response.)

6 THE COURT: All right. One of the witnesses in this
7 case may be former Secretary of State Condaleezza Rice. She
8 was part of the Cabinet of the last President Bush, that is,
9 President George W. Bush. Do any of you first of all know
10 Secretary Rice? Anybody?

11 THE PROSPECTIVE JUROR: Just as a secretary.

12 THE COURT: No, I mean, have a personal --

13 THE PROSPECTIVE JUROR: No.

14 THE COURT: Ever known her personally.

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: All right. Were any of you members of
17 the President Bush Administration? I mean, not that you were a
18 government employee while he was president but actually a
19 member of his cabinet or of the immediate administration? Is
20 there anybody?

21 (No response.)

22 THE COURT: Do any of you have any feelings about the
23 Bush Administration or Secretary Rice's performance that you
24 feel in any respect might make it difficult for you to evaluate
25 her testimony fairly?

1 (No response.)

2 THE COURT: Do any of you feel that because she is a
3 former Secretary of State and had other high-level government
4 positions, her testimony would somehow be worthy of more
5 credibility than that of just an ordinary citizen who's coming
6 in to testify? Anybody?

7 (No response.)

8 THE COURT: All right. I've asked some of you this
9 question but I'm just going to expand it to all of you now, so
10 if you've already answered this question, you don't need to
11 raise your hand, but to your knowledge, have any of you or any
12 of your close relatives ever been investigated for or charged
13 with possession -- unlawful possession of classified government
14 documents?

15 (No response.)

16 THE COURT: Other than what some of you have already
17 told me, have any of you ever been involved in investigating
18 such an issue?

19 (No response.)

20 THE COURT: To your knowledge, have any of you ever
21 been called as a witness to have to testify or give information
22 about a possible leak of classified information?

23 (No response.)

24 THE COURT: No? All right.

25 Have any of you ever been a witness in any kind of

1 trial proceeding? I'm sure some of you have. I usually get
2 answers to that question.

3 The gentleman in the white shirt, your name, sir?

4 THE PROSPECTIVE JUROR: Name is James Lyke, L-y-k-e.
5 Background, in 1979, I was a witness in a criminal case.

6 THE COURT: What kind of a criminal case?

7 THE PROSPECTIVE JUROR: A high school friend of mine
8 was charged with drunk driving and possession of marijuana.

9 THE COURT: And so I assume you were called by the
10 defense?

11 THE PROSPECTIVE JUROR: Correct.

12 THE COURT: All right. Was there anything about that
13 experience that you feel could affect your ability to be
14 impartial in judging this case?

15 THE PROSPECTIVE JUROR: No, ma'am.

16 THE COURT: All right, thank you, Mr. Lyke.

17 Anybody else on the far side? Yes, in the back, your
18 name, please?

19 THE PROSPECTIVE JUROR: Margaret Rowe. I don't know
20 exactly how long ago, but I was called as a witness in a
21 litigation against a salesman for a yearbook company who
22 overstepped his territory bounds, and I was found by the
23 attorneys pending against him because I had dealings with him
24 when I was in college.

25 THE COURT: All right. Ms. Rowe, was there anything

1 about your experience on the witness stand that you feel could
2 affect your impartiality in judging this case?

3 THE PROSPECTIVE JUROR: No, ma'am.

4 THE COURT: Thank you, ma'am.

5 All right, anybody else on the left side?

6 (No response.)

7 THE COURT: Now, in the center, anybody who's been a
8 witness? Yes, ma'am -- let me start in the first row just to
9 keep my normal practice.

10 THE PROSPECTIVE JUROR: Jim Carnes, C-a-r-n-e-s.

11 THE COURT: Yes.

12 THE PROSPECTIVE JUROR: I was a witness in a case in
13 this courthouse where an individual was -- federal --
14 Department of Defense employee was protesting a job dismissal.
15 He was --

16 THE COURT: And you were called by which side?

17 THE PROSPECTIVE JUROR: The defense.

18 THE COURT: All right. Was there anything --

19 THE PROSPECTIVE JUROR: I was in the office with him.
20 I was employed in the office in which he served.

21 THE COURT: Was there anything about your experience
22 as a witness in that case that you feel might make it difficult
23 to be impartial in judging this case?

24 THE PROSPECTIVE JUROR: No.

25 THE COURT: All right, thank you, sir.

1 All right, now in the second row? Yes, ma'am, your
2 name, please? Yeah.

3 THE PROSPECTIVE JUROR: Nancy Gofus. I was a witness
4 in a case in the Richmond courts where my corporation was suing
5 an employee for intellectual property theft.

6 THE COURT: And was there anything about your
7 experience as a witness that you feel might affect your
8 impartiality?

9 THE PROSPECTIVE JUROR: No.

10 THE COURT: Thank you, Ms. Gofus.

11 All right, anybody else? Yes, your name, please?

12 THE PROSPECTIVE JUROR: I'm Rebecca Miller.

13 THE COURT: Yes, Ms. Miller.

14 THE PROSPECTIVE JUROR: And I've been a witness in
15 four court cases just over my lifetime. One was when I was a
16 child a long time ago over a horse thing. I was ten. And then
17 once I was a witness in an automobile accident in Herndon, and
18 then once also as a witness in a drunk driving accident, and
19 then most recently I was called as a witness in a real estate,
20 husband-wife issue over real estate.

21 THE COURT: Now, Ms. Miller, having been on the stand
22 a few times, in any respect, do you feel those experiences
23 could affect your impartiality in judging this case?

24 THE PROSPECTIVE JUROR: No.

25 THE COURT: Thank you, ma'am.

1 Yes, your name, please?

2 THE PROSPECTIVE JUROR: Ms. Lhommedieu.

3 THE COURT: Yes, ma'am.

4 THE PROSPECTIVE JUROR: I was a witness in a domestic
5 matter against my ex-husband.

6 THE COURT: All right. Was there anything about that
7 experience that you feel could affect your impartiality?

8 THE PROSPECTIVE JUROR: Not at all.

9 THE COURT: All right, thank you.

10 Anybody else in the center section? Yes, your name,
11 please?

12 THE PROSPECTIVE JUROR: Gabriel Chu. I'm not sure
13 if --

14 THE COURT: I'm sorry, you're Mr.?

15 THE PROSPECTIVE JUROR: Gabriel Chu.

16 THE COURT: Yes, sir.

17 THE PROSPECTIVE JUROR: I'm not sure if this
18 qualifies, but I was in a car accident, and I had to testify.

19 THE COURT: That does count. Is there anything about
20 your experience on the witness stand that you feel could affect
21 your impartiality?

22 THE PROSPECTIVE JUROR: No.

23 THE COURT: And, ladies and gentlemen, the reason I
24 ask this question and the next question is going to be about
25 prior jury service is sometimes something happens when you're

1 in another court, and it upsets you enough or it shocks you
2 enough that it can actually affect your attitude towards the
3 legal system, and that's why we just want to make sure that any
4 prior experience you've had in proceedings like this might not
5 affect how you judge this case.

6 And, Mr. Chu, you said there was no problem?

7 THE PROSPECTIVE JUROR: No.

8 THE COURT: Okay. Great.

9 Anybody else in the center section? Yes, in the
10 back, your name, please?

11 THE PROSPECTIVE JUROR: Peter Lynn, L-y-n-n.

12 THE COURT: Yes, sir.

13 THE PROSPECTIVE JUROR: A witness as an employer in
14 an unemployment claim.

15 THE COURT: Anything about that experience that you
16 feel might affect your impartiality in judging this case?

17 THE PROSPECTIVE JUROR: No.

18 THE COURT: All right, thank you, sir.

19 How about on the right side? Anybody with witness
20 experience? Let me start in the front. Your name, please?

21 THE PROSPECTIVE JUROR: Donna Beitzel.

22 THE COURT: Can you spell the last name?

23 THE PROSPECTIVE JUROR: B-e-i-t-z-e-l.

24 THE COURT: Yes, ma'am.

25 THE PROSPECTIVE JUROR: May I approach the bench,

1 please?

2 THE COURT: Yes.

3 (Bench conference on the record.)

4 THE PROSPECTIVE JUROR: It's a domestic --

5 THE COURT: Wait.

6 THE PROSPECTIVE JUROR: Okay.

7 THE COURT: And you're Ms. Beitzel?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Yes, Ms. Beitzel.

10 THE PROSPECTIVE JUROR: I had a domestic dispute with
11 my current husband.

12 THE COURT: A domestic dispute with your husband?

13 THE PROSPECTIVE JUROR: With my husband, yes. I was
14 called for the prosecution.

15 THE COURT: And you had to testify?

16 THE PROSPECTIVE JUROR: Um-hum.

17 THE COURT: Is there anything about your experience
18 on the witness stand that you think would make it difficult for
19 you to be impartial in judging this case?

20 THE PROSPECTIVE JUROR: No. I just don't want to
21 discuss it publicly.

22 THE COURT: That's fine. Thank you very much.

23 THE PROSPECTIVE JUROR: Thank you.

24 (End of bench conference.)

25 THE COURT: All right, we were asking about whether

1 anybody had any experience as a witness, and I think there are
2 still a few hands over on the side.

3 Yes, sir, your name?

4 THE PROSPECTIVE JUROR: George McCool.

5 THE COURT: How do you spell the last name?

6 THE PROSPECTIVE JUROR: M-c-C-o-o-l.

7 THE COURT: Yes, sir.

8 THE PROSPECTIVE JUROR: I was called in a child abuse
9 case several years ago by my employer.

10 THE COURT: All right. Is there anything about your
11 experience as a witness that you think could affect your
12 ability to be impartial in judging this case?

13 THE PROSPECTIVE JUROR: No, ma'am.

14 THE COURT: Thank you, Mr. McCool.

15 And there's another hand over there. Yes, way in the
16 back. Yes.

17 THE PROSPECTIVE JUROR: Gregory Fabian. I was a
18 witness in traffic court about ten years ago.

19 THE COURT: Was there anything about that experience
20 that you feel could affect your impartiality in judging this
21 case?

22 THE PROSPECTIVE JUROR: No.

23 THE COURT: Thank you, Mr. Fabian.

24 And one more hand over there? Yes, ma'am.

25 THE PROSPECTIVE JUROR: Cathleen Gregorson.

1 THE COURT: Yes, ma'am.

2 THE PROSPECTIVE JUROR: I was a witness in a TPR
3 trial last March.

4 THE COURT: And is there anything about that
5 experience that you feel could affect your impartiality in
6 judging this case?

7 THE PROSPECTIVE JUROR: Honestly, it's still very
8 fresh. I will try very hard to remain impartial.

9 THE COURT: Did you have a tough time on the witness
10 stand?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: And you were, I would assume,
13 aggressively cross-examined?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: And did that leave a bad feeling?

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: All right, thank you, Ms. Gregorson.
18 Anybody else?

19 (No response.)

20 THE COURT: Now, the next question has to do with
21 jury service. I'd like to know if any of you have ever served
22 on either a trial or a grand jury. This would include criminal
23 and/or civil cases either in federal or state court. So we're
24 looking for your experience as a juror. Anybody?

25 I'm just going to start on the left side. Anybody on

1 the left side?

2 Yes, ma'am, your name, please?

3 THE PROSPECTIVE JUROR: Debra Williams. I've
4 actually served twice. Once was for a domestic abuse, and the
5 second case was for breaking and entering.

6 THE COURT: All right. Now, in terms of those two
7 cases, what happened? What did the jury do in those cases?

8 THE PROSPECTIVE JUROR: In the domestic abuse, he was
9 found not guilty, and for breaking and entering, it was a
10 guilty plea. It was California, third strike.

11 THE COURT: All right. Now, Ms. Williams, is there
12 anything about your experience in either of those two trials
13 that you feel could affect your impartiality as a juror in this
14 case?

15 THE PROSPECTIVE JUROR: Not at all.

16 THE COURT: Thank you, ma'am.

17 Yes, your name again, please?

18 THE PROSPECTIVE JUROR: Nancy Perry.

19 THE COURT: Yes, Ms. Perry.

20 THE PROSPECTIVE JUROR: I served in a jury for a DWI.

21 THE COURT: And what did the jury do in that case?

22 THE PROSPECTIVE JUROR: He was found guilty.

23 THE COURT: All right. And, Ms. Perry, is there
24 anything about that experience that you feel could affect your
25 impartiality in judging this case?

1 THE PROSPECTIVE JUROR: No, ma'am.

2 THE COURT: All right, thank you.

3 Yes, your name, please?

4 THE PROSPECTIVE JUROR: Kristin Witters.

5 THE COURT: Yes, Ms. Witters.

6 THE PROSPECTIVE JUROR: It's W-i.

7 THE COURT: Thank you.

8 THE PROSPECTIVE JUROR: I served on two juries in the
9 past six years for Fairfax County, both civil. One was a
10 theft, and one was domestic violence.

11 THE COURT: All right, what did the jury do in those
12 cases?

13 THE PROSPECTIVE JUROR: Both were dismissed.

14 THE COURT: Both were -- so the jury found --

15 THE PROSPECTIVE JUROR: Not guilty.

16 THE COURT: Not guilty, all right.

17 Is there anything about those experiences that you
18 feel could affect your impartiality as a juror in this case?

19 THE PROSPECTIVE JUROR: No, ma'am.

20 THE COURT: Thank you.

21 Anyone else on the left side? Yes, your name,
22 please?

23 THE PROSPECTIVE JUROR: Suzanne Yerks, Y-e-r-k-s.

24 THE COURT: Yes, ma'am.

25 THE PROSPECTIVE JUROR: I served on a jury for a

1 robbery in circuit court.

2 THE COURT: And what did the jury do in that case?

3 THE PROSPECTIVE JUROR: Found the defendant guilty.

4 THE COURT: Is there anything about your experience
5 as a juror in that case that you feel could affect your
6 impartiality in this case?

7 THE PROSPECTIVE JUROR: No, ma'am.

8 THE COURT: Thank you, Ms. Yerks.

9 Yes, sir, your name, please?

10 THE PROSPECTIVE JUROR: Sidney Shaw.

11 THE COURT: Yes, Mr. Shaw.

12 THE PROSPECTIVE JUROR: I served on an Arlington
13 County jury. It was a speeding violation, and the defendant
14 was found guilty.

15 THE COURT: Was found guilty?

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: Anything about that experience that you
18 feel could affect your impartiality as a --

19 THE PROSPECTIVE JUROR: No, ma'am.

20 THE COURT: All right, thank you, sir.

21 Anyone else on the left side?

22 (No response.)

23 THE COURT: All right, how about in the center now?
24 We'll start in the first row. Yes, ma'am, in the red shirt.

25 THE PROSPECTIVE JUROR: Anne Marie Cassidy,

1 C-a-s-s-i-d-y.

2 THE COURT: Thank you, ma'am.

3 THE PROSPECTIVE JUROR: It was Loudoun County, and it
4 was an assault on a police officer, and the person was found
5 guilty.

6 THE COURT: All right. Was there anything about your
7 experience on that jury that you feel could affect your
8 impartiality in this case?

9 THE PROSPECTIVE JUROR: No, ma'am.

10 THE COURT: Thank you, Ms. Cassidy.

11 Yes, sir, your name again?

12 THE PROSPECTIVE JUROR: Paul Glen.

13 THE COURT: Yes.

14 THE PROSPECTIVE JUROR: It was just a Fairfax County
15 civil where a car hit a man on a bicycle.

16 THE COURT: All right. And, Mr. Glen, what did the
17 jury do in that case?

18 THE PROSPECTIVE JUROR: There was an award made to
19 the individual on the bicycle.

20 THE COURT: All right, was there anything about that
21 experience that you feel could affect your impartiality in this
22 case?

23 THE PROSPECTIVE JUROR: No, ma'am.

24 THE COURT: All right, thank you, Mr. Glen.

25 Yes, your name?

1 THE PROSPECTIVE JUROR: Jim Carnes again.

2 THE COURT: Yes, Mr. Carnes.

3 THE PROSPECTIVE JUROR: Federal grand jury, one year,
4 served here in the building.

5 THE COURT: All right. Now, Mr. Carnes, you know
6 that the standard in the grand jury is just probable cause.

7 THE PROSPECTIVE JUROR: Yes, ma'am.

8 THE COURT: It's not proof beyond a reasonable doubt.
9 You can appreciate that difference?

10 THE PROSPECTIVE JUROR: Yes, ma'am.

11 THE COURT: Is there anything about your experience
12 in a grand jury that you feel could affect your ability to
13 judge this case fairly and impartially?

14 THE PROSPECTIVE JUROR: No.

15 THE COURT: All right, thank you, sir.
16 Yes, your name, please?

17 THE PROSPECTIVE JUROR: Catterall, with a "C."

18 THE COURT: Yes, sir.

19 THE PROSPECTIVE JUROR: I served on a jury 20-25
20 years ago.

21 THE COURT: And what kind of a case was it,
22 Mr. Catterall?

23 THE PROSPECTIVE JUROR: Some kind of destruction of
24 property, I believe.

25 THE COURT: Do you remember what the jury did?

1 THE PROSPECTIVE JUROR: Found him guilty.

2 THE COURT: All right. Was there anything about that
3 experience that you feel could affect your impartiality as a
4 judge in this case?

5 THE PROSPECTIVE JUROR: No.

6 THE COURT: Thank you, sir.

7 All right, how about in the second row? Yes, on the
8 aisle again?

9 THE PROSPECTIVE JUROR: Bernard Engel. I served on a
10 jury in Montgomery County. It was a criminal case, robbery.
11 We found the defendant not guilty.

12 THE COURT: You found him not guilty?

13 THE PROSPECTIVE JUROR: Not guilty.

14 THE COURT: All right. And, Mr. Engel, is there
15 anything about that experience that you feel could affect your
16 impartiality in this case?

17 THE PROSPECTIVE JUROR: No, ma'am.

18 THE COURT: Thank you, sir.

19 Your name, please?

20 THE PROSPECTIVE JUROR: I'm David Anderson. I served
21 on three juries in southern California, two civil, one
22 criminal. The two civil found for the plaintiff. The criminal
23 was hung.

24 THE COURT: Was hung.

25 THE PROSPECTIVE JUROR: Yes.

1 THE COURT: Now, was there anything about that
2 experience, especially being on a hung jury, that means the
3 jurors could not agree, that you feel could affect your
4 impartiality in judging this case?

5 THE PROSPECTIVE JUROR: No.

6 THE COURT: In terms of the hung jury experience, do
7 you know whether you were one of the hangers?

8 THE PROSPECTIVE JUROR: I was the foreman. It was
9 eleven to one. I was not one of the hangers.

10 THE COURT: All right, did you have any -- as a
11 result of that experience on that jury, do you have any
12 attitudes or feelings about the jury process that you think
13 could affect your ability to judge this case?

14 THE PROSPECTIVE JUROR: At the time, I was very
15 frustrated, but that was many years ago, so no.

16 THE COURT: All right. And you, and you understand
17 and, I assume, appreciate that each juror has a right to his
18 own evaluation of the evidence, and all the other jurors are
19 supposed to listen to that evaluation and consider it
20 carefully?

21 THE PROSPECTIVE JUROR: Correct.

22 THE COURT: All right, thank you, Mr. Anderson.

23 Anybody else in Mr. Anderson's row? Yes, ma'am, your
24 name, please?

25 THE PROSPECTIVE JUROR: Yes. Alberta Hickey.

1 THE COURT: Yes, Ms. Hickey.

2 THE PROSPECTIVE JUROR: I served on a Fairfax County
3 jury. The woman was found not guilty. It was a civil case.

4 THE COURT: Is there anything about that experience
5 that you feel could affect your impartiality in this case?

6 THE PROSPECTIVE JUROR: No.

7 THE COURT: All right, thank you, Ms. Hickey.
8 Yes, your name, please?

9 THE PROSPECTIVE JUROR: Diane Gilliam.

10 THE COURT: Yes, Ms. Gilliam.

11 THE PROSPECTIVE JUROR: It was a criminal case, a
12 murder case actually.

13 THE COURT: A murder case?

14 THE PROSPECTIVE JUROR: Yeah.

15 THE COURT: In what jurisdiction?

16 THE PROSPECTIVE JUROR: Prince William County.

17 THE COURT: I'm sorry?

18 THE PROSPECTIVE JUROR: Prince William County. He
19 was found guilty. It was about 20 years ago.

20 THE COURT: All right. And, Ms. Gilliam, was there
21 anything about your experience on that jury that you feel could
22 affect your impartiality in judging this case?

23 THE PROSPECTIVE JUROR: Since it's been so long ago,
24 no.

25 THE COURT: All right, thank you, ma'am.

1 All right, anybody else now in the center section?
2 How about the back rows? Any people with jury experience in
3 the back? No?

4 (No response.)

5 THE COURT: How about on the right side? Yes, your
6 name, sir?

7 THE PROSPECTIVE JUROR: Yes, David Knox, K-n-o-x.

8 THE COURT: Yes, Mr. Knox.

9 THE PROSPECTIVE JUROR: I served as an alternate
10 juror for a criminal proceeding in P. G. County for attempted
11 murder. I do not know the outcome. I was an alternate, and I
12 was let go prior to that decision.

13 THE COURT: All right, was there anything about that
14 experience in that trial that you feel could affect your
15 impartiality in judging this case?

16 THE PROSPECTIVE JUROR: No.

17 THE COURT: Thank you, sir.

18 All right. Yes, your name, please?

19 THE PROSPECTIVE JUROR: Nouredine Elabassi. It was
20 a --

21 THE COURT: I'm sorry, slow down just one second.
22 How do you spell your last name?

23 THE PROSPECTIVE JUROR: Elabassi.

24 THE COURT: Yes, Mr. Elabassi.

25 THE PROSPECTIVE JUROR: It was a case in Fairfax

1 County about whether to award damages for injury caused during
2 an accident and also determine the dollar amount for the
3 person.

4 THE COURT: And what did the jury do in that case?

5 THE PROSPECTIVE JUROR: The person was awarded
6 damages, and the jury, we decided on the amount that we had to
7 choose to give to the injuries.

8 THE COURT: All right. And was there anything about
9 your experience with that jury that you feel could affect your
10 impartiality in judging this case?

11 THE PROSPECTIVE JUROR: Absolutely not.

12 THE COURT: All right, thank you, sir.

13 All right, in the -- behind, yes, ma'am, your name,
14 please?

15 THE PROSPECTIVE JUROR: Sandra Khouri. That's
16 K-h-o-u-r-i.

17 THE COURT: Yes, Ms. Khouri.

18 THE PROSPECTIVE JUROR: This was in Kentucky. It was
19 a civil case, and it was thrown out. The defendant -- the
20 plaintiff's lawyer caught her in a lie and threw the case out.

21 THE COURT: So the jury never had to do a decision.

22 THE PROSPECTIVE JUROR: Right.

23 THE COURT: Was there anything, though, about that
24 experience while you were in court that you think could affect
25 your impartiality in judging this case?

1 THE PROSPECTIVE JUROR: No.

2 THE COURT: No? All right, thank you, ma'am.

3 Yes, sir, your name, please?

4 THE PROSPECTIVE JUROR: Brown, Scott Brown.

5 THE COURT: Yes, sir.

6 THE PROSPECTIVE JUROR: I served on a jury just for a
7 day. It was a trial, a robbery experience with the employee of
8 the employer. I was dismissed after one day.

9 THE COURT: Was there anything about your experience,
10 though, for that one day that might affect your impartiality in
11 judging this case?

12 THE PROSPECTIVE JUROR: Not at all.

13 THE COURT: All right, thank you, sir.

14 Way in the back, yes.

15 THE PROSPECTIVE JUROR: Gregory Fabian.

16 THE COURT: Yes, sir.

17 THE PROSPECTIVE JUROR: I served on a criminal jury
18 in Fairfax County.

19 THE COURT: And what kind of a case was it?

20 THE PROSPECTIVE JUROR: It was a soliciting a minor
21 case.

22 THE COURT: All right, what did the jury do in that
23 case?

24 THE PROSPECTIVE JUROR: The case was dismissed, so we
25 didn't render a verdict.

1 THE COURT: You never had to do a verdict?

2 THE PROSPECTIVE JUROR: No.

3 THE COURT: Was there anything, though, about your
4 experience in that trial that you feel could affect your
5 impartiality in judging this case?

6 THE PROSPECTIVE JUROR: No.

7 THE COURT: All right, thank you, sir.

8 Anybody else? Yes, ma'am.

9 THE PROSPECTIVE JUROR: Peggy McCoy, and back related
10 to the employment discrimination, I just wanted to put out
11 there that I have handled employment discrimination cases as a
12 defense attorney, but I don't feel as though that would affect
13 my ability to be impartial.

14 THE COURT: All right, thank you, Ms. McCoy.

15 Now, as I mentioned before, I as the presiding judge
16 at the end of the trial will give you, the jury, the specific
17 definitions of certain legal terms and the law, and you have to
18 use the law that the Court gives you, that's called the
19 instructions, in deciding the case.

20 Do any of you feel that if the Court were to give you
21 a principle of law that you thought was stupid or foolish or
22 just you didn't think was correct, would you be able to put
23 aside your own personal view of the law and apply that as given
24 to you by the Court? Is there anybody who would have trouble
25 with that?

1 Yes, sir, your name, please?

2 THE PROSPECTIVE JUROR: Gabriel Chu.

3 THE COURT: Yes, Mr. Chu. Do you have a problem with
4 that?

5 THE PROSPECTIVE JUROR: Hypothetically.

6 THE COURT: All right. Well, it's important to
7 recognize that, you know, it's not a juror's job to change the
8 law. It's to take the law that exists and apply it to the
9 facts. So you'd have a problem with that, Mr. Chu?

10 THE PROSPECTIVE JUROR: Possibly, yes.

11 THE COURT: All right, thank you, sir.

12 Is there anybody else? Yes, your name, please?

13 THE PROSPECTIVE JUROR: Matthew Lowman.

14 THE COURT: Yes, Mr. Lowman. And you'd also have an
15 issue with that?

16 THE PROSPECTIVE JUROR: I might.

17 THE COURT: It's Lowman, right, L-o-w-m-a-n?

18 THE PROSPECTIVE JUROR: L-o-w.

19 THE COURT: All right, is there anybody else? Yes,
20 ma'am, your name, please?

21 THE PROSPECTIVE JUROR: Donna Curtin.

22 THE COURT: Yes, Ms. Curtin. And you also have a
23 problem with that?

24 THE PROSPECTIVE JUROR: I could.

25 THE COURT: All right, thank you, Ms. Curtin.

1 THE PROSPECTIVE JUROR: You're welcome.

2 THE COURT: Is there anybody else? Way on the side,
3 yes.

4 THE PROSPECTIVE JUROR: I'm Gloria Roy. My brother
5 is currently serving prison time, and he was wrongly accused.

6 THE COURT: All right, how do you spell your last
7 name?

8 THE PROSPECTIVE JUROR: R-o-y, Roy.

9 THE COURT: Yes, Ms. Roy. You feel therefore you
10 might have difficulty in being --

11 THE PROSPECTIVE JUROR: He was wrongly accused.

12 THE COURT: All right, thank you, ma'am.

13 Anybody else?

14 (No response.)

15 THE COURT: Do any members of the panel have any
16 difficulty with the English language? Has anyone had trouble
17 understanding what I've said or any of the questions?

18 Yes, your name, please?

19 THE PROSPECTIVE JUROR: Ivan Hernandez.

20 THE COURT: All right, Mr. Hernandez, how long have
21 you been in the United States?

22 THE PROSPECTIVE JUROR: Fifteen years ago.

23 THE COURT: And your English sounds fine to me. Did
24 you have trouble understanding anything I've said?

25 THE PROSPECTIVE JUROR: Yes, sometimes. Especially

1 listening in this case, I'd like to be very clear what
2 everybody says.

3 THE COURT: All right, thank you, sir.

4 Is there anybody else?

5 (No response.)

6 THE COURT: Now, obviously, there are quite a few
7 issues that are going to have to be raised and addressed in
8 this case, and this trial is going to take some period of time.
9 I will assure you that we're -- the nickname for this Court is
10 the Rocket Docket, in case you haven't heard that, because we
11 are actually the fastest federal court in the country, and we
12 try to make sure that we do not waste jurors' time.

13 We appreciate how valuable your time is and what a
14 sacrifice jurors do pay in sitting in a case that is long.
15 However, I do need to have, whoever's going to be a juror has
16 to be able to give their full time and attention to the case
17 for its duration, and therefore, let me give you an approximate
18 view of the schedule. We'll be in session today until
19 approximately 6:00, and I give jurors a one-hour lunch break
20 around 1:00. It sort of depends where we are, but in that time
21 frame, and usually a 15- to 20-minute mid-morning and
22 mid-afternoon break.

23 We can accommodate some medical concerns. If folks
24 have back issues, you can stand up and move around a little
25 bit. If you have to take medication, we will certainly be able

1 to make breaks to accommodate those types of situations.

2 We will run this trial this week. Today, obviously,
3 we started already at 10:00. Wednesday and Thursday, we're
4 going to start a little earlier, at 9:30, and you will be out
5 no later than 5:30. On Friday, we will be starting at 10:00,
6 and we will be out by 5:00.

7 Next Monday is the Martin Luther King federal
8 holiday, so we will not be in session, and then next week,
9 Tuesday, Wednesday, and Thursday, we would have those 9:30
10 start times. I'm not yet sure what time we would start on
11 Friday.

12 The trial will most likely go into the last week of
13 January. How far, I don't know. And I am assured by everybody
14 that this case will be fully completed by the end of January,
15 which would be January 30. So those of you who have February
16 plans or commitments will not have a problem, but I do need all
17 of you to be able to sit throughout January, and it might be
18 sooner than the end of the month. I can't tell you for
19 certain, but that would be the outside limit.

20 So we need jurors who are able to give their full
21 time and attention to this trial with that time frame in mind.
22 So if any of you have any medical issues, any business issues
23 that cannot be changed or accommodated, or any other family
24 situations that would interfere with your ability to serve on
25 this jury, I need to know that now.

1 So let me start in the first row, whether that
2 schedule would create an insurmountable problem for any of you.
3 Yes, sir, your name, please?

4 THE PROSPECTIVE JUROR: Last name is Stanley.

5 THE COURT: All right, hold on one second.

6 THE PROSPECTIVE JUROR: S-t-a-n-l-e-y.

7 THE COURT: Yes, Mr. Stanley.

8 THE PROSPECTIVE JUROR: I'm director of finance for a
9 small nonprofit. I handle all the tax and financial
10 requirements, and January is tax financial --

11 THE COURT: I'm sorry, January is what?

12 THE PROSPECTIVE JUROR: Tax financial issues, and
13 it's 1099s, and I do it all for my small nonprofit.

14 THE COURT: Well, how many 1099s do you have to
15 generate?

16 THE PROSPECTIVE JUROR: Three- four hundred. And I
17 handle all the financial.

18 THE COURT: And there's nobody else who can do that
19 for you?

20 THE PROSPECTIVE JUROR: My bookkeeper handles the
21 payment of bills, but I handle everything else.

22 THE COURT: All right, thank you, Mr. Stanley.

23 All right, yes, ma'am, your name again?

24 THE PROSPECTIVE JUROR: Harriet Shriver.

25 THE COURT: Ms. Shriver, yes.

1 THE PROSPECTIVE JUROR: I have reservations on an
2 auto train for Florida and a lease in Florida starting the
3 23rd.

4 THE COURT: Of January?

5 THE PROSPECTIVE JUROR: Whatever Saturday is. The
6 24th, I guess, the 25th.

7 THE COURT: So that's a prepaid lease?

8 THE PROSPECTIVE JUROR: Yeah.

9 THE COURT: All right, thank you, Ms. Shriver.
10 Yes, ma'am, your name, please?

11 THE PROSPECTIVE JUROR: Donna Curtin.

12 THE COURT: Yes, Ms. Curtin.

13 THE PROSPECTIVE JUROR: I do have a medical test
14 scheduled for the last week in January. It could be changed,
15 but it shouldn't be changed.

16 THE COURT: All right, thank you, ma'am.

17 How about anybody else in the first row? Yes, you're
18 Ms. McCool?

19 THE PROSPECTIVE JUROR: Peggy McCoy.

20 THE COURT: McCoy, yes.

21 THE PROSPECTIVE JUROR: Well, I feel terrible saying
22 this, but I have a three-year-old at home, and so I would have
23 to rely on an 80-year-old grandparent to take care of her
24 pretty much every day unless my husband took off from work.

25 THE COURT: Well, I mean, legitimate child care

1 issues are something we certainly will consider. So it's not
2 possible for you to sit then for that length of time?

3 THE PROSPECTIVE JUROR: Really it's not. And the Bar
4 Association also has a pretty significant event in the middle
5 of February. Again, that's a social event, that's not life or
6 death, but the situation with the three-year-old is a problem.

7 THE COURT: All right, thank you.

8 All right. And over here, yes, sir, your name,
9 please?

10 THE PROSPECTIVE JUROR: Yeah, David Knox, K-n-o-x.

11 THE COURT: Yeah.

12 THE PROSPECTIVE JUROR: I have a personal trip with
13 tickets planned and paid for starting the evening of the 28th.

14 THE COURT: So that's Wednesday evening.

15 THE PROSPECTIVE JUROR: Yes, ma'am.

16 THE COURT: All right, thank you, sir.

17 All right, in the second row? And I'm just going to
18 now take the whole left side. Is there anybody on the left
19 side for whom -- yes, ma'am?

20 THE PROSPECTIVE JUROR: Manavi Puri.

21 THE COURT: What's the last name?

22 THE PROSPECTIVE JUROR: P-u-r-i.

23 THE COURT: Yes, Ms. Puri.

24 THE PROSPECTIVE JUROR: I don't know if this is
25 important, either, but I just changed jobs, and I'm on a

1 three-month probation period which ends February 3. So I'm a
2 little concerned if I'm out of the office for the next three
3 weeks.

4 THE COURT: Well, you have protection from employment
5 actions --

6 THE PROSPECTIVE JUROR: Okay.

7 THE COURT: -- as a, as a juror.

8 Is it a government agency or a private company?

9 THE PROSPECTIVE JUROR: No, nonprofit organization.

10 THE COURT: It's a nonprofit? You shouldn't have a
11 problem.

12 THE PROSPECTIVE JUROR: Okay.

13 THE COURT: All right? But otherwise, you can sit;
14 is that correct?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: All right, thank you.

17 Anybody else? Yes, your name, sir?

18 THE PROSPECTIVE JUROR: Sidney Shaw. My wife is
19 scheduled for surgery on the 21st of January. It should be
20 minor, but it's certainly a concern.

21 THE COURT: Okay. That's Wednesday. I assume you
22 were planning to be with her for that?

23 THE PROSPECTIVE JUROR: Yes. But I would like to
24 confer with her and see how she feels about it before I commit.

25 THE COURT: All right, thank you, Mr. Shaw.

1 Yes, ma'am, your name?

2 THE PROSPECTIVE JUROR: Maria Pierce.

3 THE COURT: Yes, Ms. Pierce.

4 THE PROSPECTIVE JUROR: Yes, I'm the sole coordinator
5 and office manager for a small dental practice, and it's really
6 just the doctor and myself. So for today, I bumped the morning
7 patients to the afternoon, but I can't do that for two weeks.

8 THE COURT: All right, Ms. Pierce, thank you.

9 Way in the back, yes.

10 THE PROSPECTIVE JUROR: Sheena Tosta.

11 THE COURT: Hold on one second, ma'am. How do you
12 pronounce your -- spell your last name?

13 THE PROSPECTIVE JUROR: "T" like Tom.

14 THE COURT: Yes, ma'am.

15 THE PROSPECTIVE JUROR: I am an HMR manager for a
16 small company, and we have a deadline for next Friday for
17 benefits, and I have no one else to do that.

18 THE COURT: How many employees do you have to do
19 paperwork for?

20 THE PROSPECTIVE JUROR: 125.

21 THE COURT: 125?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: All right, Ms. Tosta, thank you.

24 Yes, ma'am.

25 THE PROSPECTIVE JUROR: I have --

1 THE COURT: I'm sorry, your last name?

2 THE PROSPECTIVE JUROR: Roy, R-o-y.

3 THE COURT: Yes, Ms. Roy.

4 THE PROSPECTIVE JUROR: I have panic attacks, and
5 it's very hard for me to sit, even sit in this room, and I need
6 to get some air at this moment, but I'm trying to control
7 myself.

8 THE COURT: All right, Ms. Roy, thank you.

9 Anybody else? Yes, your name, please?

10 THE PROSPECTIVE JUROR: George-Ann Tobin.

11 THE COURT: Yes, Ms. Tobin.

12 THE PROSPECTIVE JUROR: I'm the chief investment
13 officer for the National Gallery of Art, and we have a board
14 meeting the morning of January 29.

15 THE COURT: How long would that meeting last?

16 THE PROSPECTIVE JUROR: An hour and a half.

17 THE COURT: And is that the only conflict you've got
18 during that time period?

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: All right. We might be able to work
21 around that if you're chosen, all right, but that would be the
22 only thing -- I'm sorry, what time would that meeting be?

23 THE PROSPECTIVE JUROR: It's at 11:00, so I'd have to
24 be there kind of from 10:30 to, yeah.

25 THE COURT: But you'd be able to be back here by two?

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: All right, thank you.

3 Yes, your name, please?

4 THE PROSPECTIVE JUROR: I'm Margaret Rowe. I am the
5 director of pharmacy at Fauquier Hospital. We're a small
6 hospital in Warrenton. We just experienced a huge flu epidemic
7 that was very difficult to manage.

8 I'm also having an attorney leave my department, and
9 so I have staffing responsibilities, so it's difficult for me.
10 A few days would be fine, but a three-week commitment would
11 probably not work.

12 THE COURT: All right, thank you, Ms. Rowe.

13 How about in the -- is that everybody on the left?

14 (No response.)

15 THE COURT: All right, in the center section. Yes,
16 we'll start on the aisle again. Yes, sir.

17 THE PROSPECTIVE JUROR: May I approach?

18 THE COURT: Yes.

19 (Bench conference on the record.)

20 THE COURT: Yes. Remind me of your name again.

21 THE PROSPECTIVE JUROR: I'm Bernard Engel.

22 THE COURT: Yes, Mr. Engel.

23 THE PROSPECTIVE JUROR: When I got to the building
24 this morning, I got a phone call that my sister-in-law had died
25 this morning.

1 THE COURT: I'm sorry.

2 THE PROSPECTIVE JUROR: They think the funeral is
3 going to be on Thursday, but obviously, they're not sure yet,
4 and so I, you know --

5 THE COURT: Will that be out of town?

6 THE PROSPECTIVE JUROR: No, no, it will be here.

7 THE COURT: So that will be Thursday?

8 THE PROSPECTIVE JUROR: Likely. I'll know, you know,
9 later on today, I would assume I would find out the exact day.

10 THE COURT: I appreciate your telling me that. I'm
11 so sorry for your loss.

12 THE PROSPECTIVE JUROR: Thank you. I appreciate
13 that.

14 (End of bench conference.)

15 THE COURT: Yes, sir.

16 THE PROSPECTIVE JUROR: I would also like to
17 approach, Your Honor.

18 THE COURT: All right.

19 (Bench conference on the record.)

20 THE COURT: You're Mr. Anderson?

21 THE PROSPECTIVE JUROR: Mr. Anderson, Juror No. 2. I
22 have just taken a leave of absence from work. My, my son has a
23 rare disease, and it's progressed, and I need to spend time
24 with him and care for him in the last months of his life.

25 THE COURT: I'm very sorry to hear that.

1 THE PROSPECTIVE JUROR: Thank you.

2 THE COURT: Very sorry.

3 (End of bench conference.)

4 THE COURT: Before I send my folks back, is there
5 anybody else who needs to approach the bench? All right, those
6 of you who need to approach the bench, just start lining up in
7 the well.

8 All right, the first juror can come forward.

9 (Bench conference on the record.)

10 THE PROSPECTIVE JUROR: Good morning.

11 THE COURT: Yes, sir, your name, please?

12 THE PROSPECTIVE JUROR: My name is Phan Vu.

13 THE COURT: I'm sorry?

14 THE PROSPECTIVE JUROR: My name is Phan Vu, P-h-a-n
15 and my last name is V-u.

16 THE COURT: The last name is?

17 THE PROSPECTIVE JUROR: V-u.

18 THE COURT: V as in Victor? Okay. Just one second.
19 Yes, Mr. Vu.

20 THE PROSPECTIVE JUROR: Yes. Actually, over ten
21 year, I have seven surgery, and that cause my health, it's not
22 really good health --

23 THE COURT: Okay.

24 THE PROSPECTIVE JUROR: -- because I have memory and
25 memory not really good; and my, my hearing, sometime I can

1 hear; sometimes, you know, I not really hear very well.

2 THE COURT: All right.

3 THE PROSPECTIVE JUROR: And so also, my age, I'm 66
4 years old, and I retired last year. I'm not able to perform my
5 duty at work, and so that's why I retired last year, and so I
6 cannot continue to work.

7 THE COURT: All right, Mr. Vu, I think you've said
8 enough. I understand your situation. Thank you.

9 THE PROSPECTIVE JUROR: Yeah.

10 THE COURT: Thank you. You may go back to your seat.

11 THE PROSPECTIVE JUROR: Okay. Thank you.

12 THE COURT: Be careful on the step.

13 THE PROSPECTIVE JUROR: Okay. Thank you very much.

14 THE COURT: Yes, ma'am, just come up here, please.

15 Your name?

16 THE PROSPECTIVE JUROR: Ingalsbe, Nancy Ingalsbe,
17 with an "I."

18 THE COURT: Yes, ma'am.

19 THE PROSPECTIVE JUROR: I, I just want to say that I
20 feel totally overwhelmed. I was an instructional assistant in
21 an elementary school, a basic teacher's aide for 26 years, and
22 even judging children was so hard for me. I think some
23 people's personalities are more built to be a judge than
24 others, and quite honestly, I truly was never good at it.

25 If there 's some other thing that -- I don't want to

1 be a terrible American, but this is the third time that I've
2 actually been over here, and I am --

3 THE COURT: Your were called for jury duty?

4 THE PROSPECTIVE JUROR: Yeah.

5 THE COURT: All right. And you were never selected
6 as a juror?

7 THE PROSPECTIVE JUROR: No, I wasn't.

8 THE COURT: All right.

9 THE PROSPECTIVE JUROR: And --

10 THE COURT: All right, thank you, Ms. Ingalsbe.
11 Thank you.

12 THE PROSPECTIVE JUROR: I just feel like it's
13 important to be honest --

14 THE COURT: All right.

15 THE PROSPECTIVE JUROR: -- about what's inside of a
16 person's personality, and I've sat here trying to speak out and
17 not being able to, but I find this all very, very intimidating.

18 THE COURT: Would you feel it difficult to express
19 yourself in front of the other jurors if you were a juror and
20 there are other 11 other people in the room? Would you --

21 THE PROSPECTIVE JUROR: I definitely feel that way.

22 THE COURT: All right.

23 THE PROSPECTIVE JUROR: I don't really feel like it's
24 a part of what I could actually do.

25 THE COURT: All right, thank you, ma'am. You're free

1 to go.

2 Good morning.

3 THE PROSPECTIVE JUROR: Good morning. The name is
4 Angela Keaton.

5 THE COURT: Keaton. Yes, Ms. Keaton.

6 THE PROSPECTIVE JUROR: I home school my sixth grade
7 son, and he also has some educational learning disabilities, so
8 I'm also the go-between between the therapist, and that's also
9 done on a weekly basis.

10 THE COURT: Is there anybody else who's involved in
11 the home schooling, like your husband --

12 THE PROSPECTIVE JUROR: My husband, but he works, so
13 he could probably only do, like, one day a week.

14 THE COURT: All right. And what grade level?

15 THE PROSPECTIVE JUROR: Sixth grade.

16 THE COURT: Sixth grade?

17 THE PROSPECTIVE JUROR: Um-hum.

18 THE COURT: All right, thank you, ma'am.

19 THE PROSPECTIVE JUROR: Um-hum.

20 THE COURT: Yes, sir, your name, please?

21 THE PROSPECTIVE JUROR: McCool, M-c-C-o-o-l.

22 THE COURT: Yes, Mr. McCool.

23 THE PROSPECTIVE JUROR: I have three possible
24 conflicts. First of all, I'm a teacher with special needs at a
25 private day school. I have issues with my children's

1 programming and educational issues --

2 THE COURT: Wait, do they have substitute teachers
3 who cover when you're not there?

4 THE PROSPECTIVE JUROR: Really we're a small school.
5 We have one person there to cover. They might do anything, but
6 there would be testing, too, which I need to be present for.

7 Additionally, I have a pending civil court matter in
8 Fairfax on the 26th. I need to go to court.

9 THE COURT: Are you a party in that case?

10 THE PROSPECTIVE JUROR: I am. I am actually the
11 defendant.

12 THE COURT: And what kind of a case is it?

13 THE PROSPECTIVE JUROR: Small claims, civil.

14 THE COURT: All right. That's January 26?

15 THE PROSPECTIVE JUROR: Yes, ma'am, 9:30 a.m.

16 THE COURT: All right, thank you, Mr. McCool.

17 THE PROSPECTIVE JUROR: Yes, ma'am.

18 THE COURT: Yes, ma'am, your name, please?

19 THE PROSPECTIVE JUROR: My name is Sozina Khan. The
20 last name is K-h-a-n.

21 THE COURT: Yes, Ms. Khan.

22 THE PROSPECTIVE JUROR: Yes. I have a medical
23 problem. I am 65 years old, and I'm diabetic and high blood
24 pressure, and I cannot control my bladder. I have a bladder
25 control problem, and I have to run to the bathroom back and

1 forth.

2 THE COURT: If we took breaks, I mean, would you be
3 comfortable raising your hand and saying, "I need a break," and
4 we'd just give you a five-minute break?

5 THE PROSPECTIVE JUROR: I've been sitting here with
6 very great difficulty today. I have to rush back and forth to
7 the bathroom.

8 THE COURT: And it makes it hard for you to
9 concentrate?

10 THE PROSPECTIVE JUROR: It makes it very hard, and it
11 gives me pain.

12 THE COURT: All right, Ms. Khan.

13 THE PROSPECTIVE JUROR: And then I have another
14 reason. I'm running two programs for mentally challenged
15 people, and I am a decision-maker person, so if I have to be
16 here for this long period of time, it's going to be difficult.

17 THE COURT: All right, thank you, Ms. Khan.

18 THE PROSPECTIVE JUROR: Thank you.

19 THE COURT: All right, the next person?
20 Yes, your name, please?

21 THE PROSPECTIVE JUROR: Ross Banfield.

22 THE COURT: Yes, Mr. Banfield.

23 THE PROSPECTIVE JUROR: I am a proprietor of a small
24 construction company, I have 197 employees, and we are
25 struggling to make payroll. Additionally, I am manning a

1 21-day discovery period in the middle of findings for a divorce
2 case, which is on the docket in Warrenton February 14, so I, I
3 would -- my mind would not be here.

4 THE COURT: Well, I mean, how much discovery are you
5 involved with? Do you go to all the depositions?

6 THE PROSPECTIVE JUROR: No. I have to put all the
7 financial documentation together about the company's finances
8 and my finances.

9 THE COURT: Oh, oh, because of distribution issues.

10 THE PROSPECTIVE JUROR: Yes, that's correct.

11 THE COURT: And where are you in that process at this
12 point?

13 THE PROSPECTIVE JUROR: I just received notice
14 yesterday.

15 THE COURT: Okay. Thank you.

16 Yes, sir.

17 THE PROSPECTIVE JUROR: Good morning, Your Honor. My
18 name is Keric Hopkins. I'm Juror No. 48.

19 THE COURT: Yes, sir.

20 THE PROSPECTIVE JUROR: My company only provides two
21 weeks of paid jury leave, and I do not have enough personal
22 leave to cover myself financially for the amount of time that
23 you say this trial is going to take, and that would be -- I'll
24 put this in extreme financial hardship on me to have to serve
25 on this jury past about two, two-and-a-half weeks. I just

1 don't have the money to cover my bills.

2 The other issue is I'm a Type 1-1/2 diabetic, and my
3 blood sugar is rather unpredictable, and when it starts
4 crashing, I need to eat, and that would probably interfere -- I
5 understand you're going to give us breaks and stuff --

6 THE COURT: Yeah.

7 THE PROSPECTIVE JUROR: -- but I can't tell when this
8 is going to happen to me, so --

9 THE COURT: All right, thank you, Mr. Hopkins.

10 THE PROSPECTIVE JUROR: Thank you, Your Honor.

11 (End of bench conference.)

12 THE COURT: Folks, you don't have to come to the
13 bench unless you really want to, so if it's not a personal
14 matter, we'll get you on the record, but you can stay in your
15 seat. So I'm just letting you know that.

16 (Bench conference on the record.)

17 THE COURT: Yes, sir. Your name again?

18 THE PROSPECTIVE JUROR: Scott Brown, B-r-o-w-n. It's
19 under Norman.

20 My wife has a medical procedure this week, a
21 colonoscopy. I'm the only one home, so I need to be with her,
22 I believe. Next week, she's traveling visiting her ailing
23 father in St. Louis. I'm the only one home for that.

24 Later next week, I have business travel, and then the
25 topper is the following week, we have expensive ticket

1 reservations for Utah to an event.

2 THE COURT: All right. So the last week of January,
3 you've got prepaid tickets?

4 THE PROSPECTIVE JUROR: Yeah, yeah.

5 THE COURT: All right, thank you, sir.

6 THE PROSPECTIVE JUROR: Okay.

7 THE COURT: All right, the next witness -- the next
8 juror? Yes, sir, your name, please?

9 THE PROSPECTIVE JUROR: Matthew Balser, B-a-l-s-e-r.

10 THE COURT: Yes, Mr. Balser.

11 THE PROSPECTIVE JUROR: As of yesterday, I was
12 accepted and enrolled into a mandatory one-month training
13 academy for employment at the NRL in Chantilly, and it would
14 start Monday the 19th.

15 THE COURT: How are you employed right now?

16 THE PROSPECTIVE JUROR: Not by the NRL. A different
17 job.

18 THE COURT: All right, so it's a new job.

19 THE PROSPECTIVE JUROR: But in order to get it, I
20 must attend this academy 8 a.m. to 5 p.m.

21 THE COURT: Okay. Thank you, sir.

22 THE PROSPECTIVE JUROR: Thank you.

23 THE COURT: Yes, sir, your name, please?

24 THE PROSPECTIVE JUROR: Matthew Friel.

25 THE COURT: Yes, Mr. Friel.

1 THE PROSPECTIVE JUROR: I'm a full-time college
2 student.

3 THE COURT: Yeah, I thought you must be, looking at
4 your age. George Mason?

5 THE PROSPECTIVE JUROR: No. I'm actually going to
6 Northern Virginia Community College, but this is my final
7 semester before I transfer to George Mason actually.

8 THE COURT: Okay.

9 THE PROSPECTIVE JUROR: I'm just going to have a lot
10 of school-related obligations.

11 THE COURT: Are you on semester break right now or
12 are you actually back in classes?

13 THE PROSPECTIVE JUROR: My classes actually began
14 yesterday.

15 THE COURT: All right. They're five days a week?

16 THE PROSPECTIVE JUROR: Three days a week: Monday,
17 Tuesday, and Thursday.

18 THE COURT: And what time do they meet?

19 THE PROSPECTIVE JUROR: On Monday, it is from about
20 eight to twelve, Tuesday is about 12:30 to three, and about
21 12:30 to three on Thursday as well.

22 THE COURT: F-r-i-e-l is the last name?

23 THE PROSPECTIVE JUROR: Yes, ma'am.

24 THE COURT: Thank you, Mr. Friel.

25 THE PROSPECTIVE JUROR: Thank you.

1 THE COURT: Yes, ma'am, your name, please?

2 THE PROSPECTIVE JUROR: Maridel Anderson.

3 THE COURT: How do you spell the last name?

4 THE PROSPECTIVE JUROR: A-n-d-e-r-s-o-n, Anderson.

5 THE COURT: Maridel.

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: Yes, ma'am.

8 THE PROSPECTIVE JUROR: I have a diabetic -- I'm a
9 diabetic, and sometimes I shake.

10 THE COURT: Okay.

11 THE PROSPECTIVE JUROR: And I'm doing home day care
12 in the house, and I babysit also my grandbaby because my
13 daughter, she go to school.

14 THE COURT: All right, thank you, ma'am.

15 THE PROSPECTIVE JUROR: Thanks.

16 THE COURT: Yes, ma'am.

17 THE PROSPECTIVE JUROR: Good morning, Your Honor. My
18 name is Jovelita Fonseca, Your Honor.

19 THE COURT: Can you spell your last name?

20 THE PROSPECTIVE JUROR: F-o-n-s-e-c-a.

21 THE COURT: Fonseca?

22 THE PROSPECTIVE JUROR: Yes. I've been sick with
23 bronchitis for --

24 THE COURT: I'm sorry?

25 THE PROSPECTIVE JUROR: I've been sick with

1 bronchitis for almost a month now.

2 THE COURT: So you're feeling sick today?

3 THE PROSPECTIVE JUROR: I'm not being --

4 THE COURT: All right. Are you having trouble
5 understanding my English?

6 THE PROSPECTIVE JUROR: No, Your Honor.

7 THE COURT: All right. But you're just not feeling
8 well?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: All right, thank you, Ms. Fonseca.

11 THE PROSPECTIVE JUROR: Thank you, Your Honor.

12 THE COURT: Yes, ma'am, your name, please?

13 THE PROSPECTIVE JUROR: Yvonne Stephens.

14 THE COURT: What's the last name?

15 THE PROSPECTIVE JUROR: Stephens.

16 THE COURT: Yes, Ms. Stephens. Yes, ma'am.

17 THE PROSPECTIVE JUROR: For two reasons: One, I have
18 two elderly parents that are really sick, and at any time, I
19 would have probably the need to go out of town to go check on
20 them because they have been in and out of the hospital, as well
21 as I work at a university, I'm the director of one of the labs,
22 and they have nobody to keep that lab open while I'm here,
23 because like today, it's shut, so the students and no one can
24 use the labs.

25 THE COURT: Which school do you work for?

1 THE PROSPECTIVE JUROR: University of Mary
2 Washington.

3 THE COURT: And they don't have another lab director?

4 THE PROSPECTIVE JUROR: No, I'm the only one.

5 THE COURT: So how many students are dislocated
6 today?

7 THE PROSPECTIVE JUROR: Quite a few.

8 THE COURT: What kind of a lab is it?

9 THE PROSPECTIVE JUROR: It's a language lab.

10 THE COURT: Language lab.

11 THE PROSPECTIVE JUROR: And the students come in to
12 do listening lessons on the computers, and sometimes they have
13 films they've got to watch, and classes are sometimes held in
14 there as well.

15 THE COURT: And so they can't use that lab if you're
16 not there?

17 THE PROSPECTIVE JUROR: Exactly.

18 THE COURT: All right, thank you, Ms. Stephens.

19 THE PROSPECTIVE JUROR: Good morning, Judge. My name
20 is Lien Tran. T-r-a-n the last name.

21 THE COURT: I'm sorry, how do you spell the last
22 name?

23 THE PROSPECTIVE JUROR: T-r-a-n.

24 THE COURT: It's Tran.

25 THE PROSPECTIVE JUROR: Yes. I have appointment on

1 today I already cancel and have appointment next one for my
2 eye, I have some problem with my eye, on January 30.

3 THE COURT: On January 30.

4 THE PROSPECTIVE JUROR: Yes, 9:30.

5 THE COURT: Where would that appointment be? What
6 jurisdiction?

7 THE PROSPECTIVE JUROR: The appointment for my eye
8 because I have diabetes, so seven months already, after that
9 they have to check up on my eyes.

10 THE COURT: Where is the appointment?

11 THE PROSPECTIVE JUROR: The appointment is Leesburg
12 Pike.

13 THE COURT: Falls Church?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: What time is that?

16 THE PROSPECTIVE JUROR: 9:30.

17 THE COURT: After that, could you be back here by
18 lunchtime?

19 THE PROSPECTIVE JUROR: Lunchtime? What time?

20 THE COURT: I don't know, 11:00-noon?

21 THE PROSPECTIVE JUROR: (Nodding head.)

22 THE COURT: So the 30th is the only problem you have?

23 THE PROSPECTIVE JUROR: Yes, only 1-30.

24 THE COURT: Other than that, you don't have any
25 problem?

1 THE PROSPECTIVE JUROR: I don't know yet, but 30 is
2 the one important.

3 THE COURT: All right, very good. Thank you.

4 THE PROSPECTIVE JUROR: All right, thank you.

5 THE COURT: Yes, ma'am, your name, please?

6 THE PROSPECTIVE JUROR: Gilmore, Kristi Gilmore. And
7 I just wanted to mention that my husband is legally blind. I
8 mean, he's completely blind except in his left eye, which he
9 has light and dark perception, and he is employed, and it
10 shouldn't be a problem for me to serve unless there's a
11 emergency for me. For instance, two weeks ago, there was a
12 small fire at OPM, and I had to go pick him up, you know.

13 So I just wanted to bring that --

14 THE COURT: That's fine. But otherwise, you could
15 serve as a juror?

16 THE PROSPECTIVE JUROR: Yes, yes.

17 THE COURT: All right, thank you, Ms. Gilmore.

18 THE PROSPECTIVE JUROR: Okay. Thank you.

19 THE COURT: Yes, sir.

20 THE PROSPECTIVE JUROR: Hernandez.

21 THE COURT: Mr. Hernandez.

22 THE PROSPECTIVE JUROR: Yes. And the reason I wanted
23 to come up here is because I know this is a special case, and I
24 believe I have some time that they use another car, I don't
25 understand, and I would like to be cleared from being part of

1 this jury.

2 THE COURT: All right, thank you, Mr. Hernandez.

3 THE PROSPECTIVE JUROR: That's fine.

4 THE COURT: You can go back.

5 (End of bench conference.)

6 THE COURT: All right, ladies and gentlemen, I've
7 asked you a broad range of questions, and you-all, I think, now
8 understand the reason why I am asking you these questions, but
9 if there's any other thing in your life experience that you've
10 had or thing on your schedule that you haven't already told me
11 about that you feel could interfere with your ability to be a
12 fully attentive and impartial juror for the duration of the
13 trial, this is the time to let me know. Is there anybody?

14 All right, some of you I've already heard from.
15 Ma'am, tell me your name again, please.

16 THE PROSPECTIVE JUROR: Donna Curtin.

17 THE COURT: All right, Ms. Curtin, I don't need to
18 hear from you again.

19 THE PROSPECTIVE JUROR: Okay.

20 THE COURT: Just one second.

21 All right, the next person who had a hand up? Yes,
22 ma'am, your name, please?

23 THE PROSPECTIVE JUROR: Nancy Gofus.

24 THE COURT: Yes, Ms. Gofus.

25 THE PROSPECTIVE JUROR: And I am supposed to be

1 attending a conference for training incoming board chairs
2 beginning January 25. I'm the incoming board chair on the
3 College of William and Mary Foundation Board.

4 THE COURT: If you were unable to attend that, would
5 that be a serious problem for you or your school?

6 THE PROSPECTIVE JUROR: You know, the college has
7 invested money for me to be an attendee of this, and I think
8 that would be lost. That is the issue.

9 THE COURT: And would that be all that day or just --

10 THE PROSPECTIVE JUROR: No, it's in Naples, Florida.
11 It's a Sunday-through-Tuesday conference.

12 THE COURT: All right, thank you, ma'am.

13 Who else? Yes, your name, please?

14 THE PROSPECTIVE JUROR: Gabriel Chu.

15 THE COURT: I don't need to hear from you, Mr. Chu.
16 Thank you.

17 THE PROSPECTIVE JUROR: You do not?

18 THE COURT: No, that's all right.

19 Yes, ma'am, your name, please?

20 THE PROSPECTIVE JUROR: I just think that I --

21 THE COURT: I need your name.

22 THE PROSPECTIVE JUROR: Oh, I'm sorry, Rebecca
23 Miller.

24 THE COURT: Yes, Ms. Miller.

25 THE PROSPECTIVE JUROR: I think I may know just

1 professionally the sister of one of the attorneys on this side,
2 of Mr. MacMahon. I'm not 100 percent sure, but Middleburg is a
3 small town, and so if he has a relative that's in the same
4 business that I am, we may have worked together before. So I
5 need to disclose that.

6 THE COURT: In any respect, do you feel -- first of
7 all, Mr. MacMahon, do you have a sister who works in
8 Middleburg?

9 MR. MAC MAHON: Two sisters, Your Honor.

10 THE PROSPECTIVE JUROR: I only know one.

11 (Laughter.)

12 THE COURT: All right. And, I mean, would you
13 consider yourself a close friend?

14 THE PROSPECTIVE JUROR: No, not at all. It's
15 strictly professional, and I don't think it would influence my
16 decision in any way, shape, or form, but I felt like I needed
17 to disclose that.

18 THE COURT: Thank you, Ms. Miller. That's fine.

19 All right, and was there somebody else? Yes, in the
20 back there, your name, please?

21 THE PROSPECTIVE JUROR: Steve Lee.

22 THE COURT: Mr. Lee? Yes.

23 THE PROSPECTIVE JUROR: I've got personal foreign
24 travel scheduled from the 22nd through the 25th.

25 THE COURT: And is that prepaid?

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: All right, thank you, sir.

3 Anybody else? Nobody else in the center. Nobody on
4 the left?

5 (No response.)

6 THE COURT: All right, just on the right then. Yes,
7 your name, sir?

8 THE PROSPECTIVE JUROR: Nouredine Elabassi. I don't
9 know how you determine this, but I'm the sole owner, Your
10 Honor, of three businesses that employs about 70 people, and I
11 run the day-to-day operation for all the three businesses.

12 THE COURT: Would it be possible for there to be
13 somebody else to do that for you while you're here?

14 THE PROSPECTIVE JUROR: I have assistants.

15 THE COURT: You have assistants.

16 THE PROSPECTIVE JUROR: But there are certain jobs
17 that they do with their other jobs that I'm the sole person.

18 THE COURT: Well, if you were chosen to be a juror,
19 would you feel in any respect pressure from your personal
20 business commitments such that they might be a distraction?

21 THE PROSPECTIVE JUROR: Yes, ma'am.

22 THE COURT: All right, thank you, sir.

23 Anybody else? Yes, your name, please?

24 THE PROSPECTIVE JUROR: My name is Thuong Nguyen.

25 THE COURT: Yes, Mr. Nguyen.

1 THE PROSPECTIVE JUROR: Juror No. 73.

2 THE COURT: Yes, sir.

3 THE PROSPECTIVE JUROR: I was a refugee coming from a
4 totalitarian regime, so I, from time to time, I have strong
5 opposition to those oppressive regime. I don't know how that
6 is going to affect my, this case.

7 THE COURT: Well, I mentioned that the Iranian
8 nuclear weapons program will be an issue in this case. Do you
9 think because Iran is going to be a little bit involved in this
10 case, that that might be a problem for you?

11 THE PROSPECTIVE JUROR: I don't think so. I will try
12 to be as impartial as possible.

13 THE COURT: All right, thank you, Mr. Nguyen.
14 Anybody else?

15 (No response.)

16 THE COURT: All right. Counsel, approach the bench.
17 (Bench conference on the record.)

18 THE COURT: Okay. All right, first of all, is there
19 any objection to the Court's voir dire?

20 MR. OLSHAN: I don't believe so.

21 MR. FITZPATRICK: No.

22 THE COURT: Any additional questions the government
23 wants the Court to ask the pool?

24 MR. FITZPATRICK: No.

25 MR. OLSHAN: No.

1 THE COURT: No? All right.

2 Any objection to the voir dire?

3 MR. MAC MAHON: No, Your Honor.

4 THE COURT: Are there any additional questions you
5 want asked of the pool?

6 MR. MAC MAHON: No, Your Honor.

7 THE COURT: All right. Here are the ones who I think
8 we need to strike. You-all let me know if there's an
9 objection: No. 1, Maridel Anderson; No. 2, David Anderson; No.
10 3, Matthew Balser; No. 4, Ross Banfield; 9, Norman Brown; 16,
11 Gabriel Chu; 19, Donna Curtin; 24, Nouredine Elabassi; 25,
12 Bernard Engel; 28, Jovelita Fonseca; 29, Matthew Friel; 34,
13 Kristine Gilson; 35, Paul Glen; 36, Nancy Gofus; 39, Kathleen
14 Gregorson; 44, Ivan Hernandez; 48, Keric Hopkins; 52, Nancy
15 Ingalsbe; 55, Angela Keaton; 56, Sozina Khan; 58, David Knox;
16 59, Steve Lee; 62, Matthew Lowman; 65, George McCool; 66, Peggy
17 McCoy.

18 MR. TRUMP: What was the last one, Your Honor?

19 THE COURT: McCoy. 66, McCoy.

20 79, Maria Pierce; 81, Margaret Rowe; 82, Gloria Ann
21 Roy; 86, Harriet Shriver; 88, Christopher Stanley; 90, Yvonne
22 Watson Stephens; 93, Sheena Tosta; and 95, Phan Vu.

23 All right, is there any objection to those? Those
24 jurors either said they had conflicts that would result in
25 there being a hardship or they had medical issues or they have

1 biases or prejudices that gave the Court concern based upon
2 what they said during their answers.

3 MR. OLSHAN: One moment.

4 THE COURT: Yeah.

5 MR. OLSHAN: Your Honor, I believe you said Juror 35,
6 Paul Glen.

7 THE COURT: Yes.

8 MR. OLSHAN: I believe Mr. Paul stated that --

9 MR. POLLACK: We can't hear you.

10 MR. OLSHAN: I believe Mr. Paul stated that --

11 THE COURT: Mr. Glen.

12 MR. OLSHAN: Excuse me, thank you. Mr. Glen stated
13 that despite his employment, he could render a fair verdict in
14 this case.

15 THE COURT: I was concerned about him just being too
16 close to the issues in this case. I'm not -- I don't think
17 everybody who has a clearance necessarily should be stricken,
18 but his answer concerned me.

19 What's your view on 35? Do you want him struck or
20 not?

21 MR. MAC MAHON: Yes, Your Honor.

22 THE COURT: Yeah, I'm going to continue with that.

23 MR. OLSHAN: For cause.

24 THE COURT: For cause, yeah.

25 MR. MAC MAHON: I have him circled for that reason.

1 THE COURT: Yeah. I've already -- did you-all have
2 any objections to the ones I've stricken for cause?

3 MR. MAC MAHON: I don't believe so, Your Honor.

4 MR. TRUMP: I take it, Your Honor, that you feel we
5 could work around 92?

6 THE COURT: Let me see.

7 MR. MAC MAHON: Jim, can you speak up? I can't hear
8 you, I'm sorry.

9 THE COURT: Yes. Mr. Trump asked if we could work
10 around -- I just, by our count, we have enough extra jurors.
11 The critical mass that we need for you to use all of your
12 strikes and we still get 14 jurors is 32, and we still have
13 some extra jurors that I can work with, and so I think I would
14 strike 92 because again, I'm concerned about any jurors who
15 can't be here for the full time. He had a conflict on January
16 29.

17 That's what you're asking me?

18 MR. TRUMP: Yes. I just didn't know whether it was
19 an oversight or you had already determined that.

20 THE COURT: No, I was concerned to make sure we had
21 enough jurors left in the pool, but 92 will also be out.

22 And that gives me also concern about 73, Mr. Nguyen,
23 who feels so strongly about totalitarian regimes that he might
24 have a problem in this case. Anybody want him stricken for
25 cause?

1 If nobody's asking for it, I'll leave him in the
2 pool, but that gives me a little bit of a concern because Iran
3 is involved in this case. Nobody cares?

4 MR. MAC MAHON: No, not for the defense.

5 THE COURT: All right, we'll leave him in.
6 Is there anybody else?

7 We have Mr. -- 84 is Sidney Shaw. He's got a wife
8 with surgery on January 21. He wasn't sure, but, you know,
9 again, I don't want all of a sudden on the 20th to hear that a
10 juror is not going to be here. So do you want me to strike him
11 now?

12 You don't care?

13 MR. MAC MAHON: I don't take a position on that, Your
14 Honor.

15 MR. OLSHAN: We don't have a position, either. If
16 the Court -- if there are enough left --

17 THE COURT: There are enough jurors in the pool, let
18 me strike 84 as well, all right?

19 So were there any other people who the government
20 wants the Court to strike for cause?

21 While they're doing it, are there any others you-all
22 want stricken for cause?

23 MR. MAC MAHON: Your Honor, if it's okay, we are both
24 keeping different lists, but I had David Anderson as a CIA
25 employee.

1 THE COURT: He's out.

2 MR. MAC MAHON: He's already out. And then a man
3 named Frith, he's a military officer.

4 MR. TRUMP: What number?

5 MR. MAC MAHON: He's 30. He wasn't as close as the
6 other one you struck, but I thought he was also a little too
7 close for comfort.

8 THE COURT: No, I didn't see anything. I watch them
9 pretty carefully when they answer. I think he can be a
10 straight shooter. I'll overrule that request.

11 MR. MAC MAHON: And the gentleman -- oh, we already
12 got him, I think -- who talked about the hung jury, I think
13 that's Mr. Anderson again.

14 MR. OLSHAN: He's out.

15 THE COURT: Yes, he's out.

16 MR. MAC MAHON: He's out.

17 Mr. Pollack may have something that -- we haven't had
18 a chance to coordinate.

19 MR. POLLACK: Your Honor, I have in my notes No. 98,
20 Debra Williams --

21 THE COURT: Right.

22 MR. POLLACK: -- works for the Department of Homeland
23 Security but actually sits at the CIA and has had conversations
24 with members of the CIA.

25 I felt that she may be too steeped in --

1 THE COURT: Well, you know, she sat on two juries,
2 and one was a not guilty verdict, so, I mean, she clearly knows
3 how to be an impartial judge.

4 MR. POLLACK: I understand, but there's a difference
5 between a domestic abuse case and a case involving national
6 security issues, and that's her area of expertise.

7 THE COURT: Well, I don't think that necessarily
8 disqualifies a person. I don't think again that there was
9 enough, any of what she said to give me concern. So I
10 understand your concern, but I'm going to overrule it.

11 MR. POLLACK: Thank you, Your Honor.

12 MR. OLSHAN: I was just curious if the Court has done
13 a rough count of about how many we've got left after all these.

14 THE COURT: There's enough.

15 MR. OLSHAN: Okay.

16 THE COURT: You've got all your strikes. Don't worry
17 about it.

18 MR. OLSHAN: The only issue is when we hand the
19 jurors a list of witnesses, we could lose a couple more.

20 THE COURT: You might lose one or two, but we're all
21 right.

22 MR. OLSHAN: Okay.

23 THE COURT: Anything further?

24 (No response.)

25 THE COURT: I think given the hour, since you're up

1 here, what we're going to do is once we get the jury seated and
2 I've given them preliminary instructions, we'll take the lunch
3 break. So the two opening statements will be back to back
4 without a break because there's not going to be enough time for
5 you to do an opening statement before 1:00, all right?

6 And it does mean we will be calling witnesses today,
7 so your first couple of witnesses need to be in the building by
8 2:00 or so.

9 MR. OLSHAN: We will be prepared.

10 THE COURT: Anything further? Because we need to get
11 this moving. No?

12 MR. POLLACK: (Shaking head.)

13 THE COURT: All right, then I find the remainder of
14 the pool to be without objection, and we'll go ahead and we'll
15 start selecting them. Once we have the 14 in the box, I'll
16 explain to them that you'll show them the list of witnesses,
17 give them a minute to see if they recognize any of the names.
18 If they don't, they'll return the list to Mr. Wood, and then
19 we'll go ahead and do the strikes, okay?

20 MR. OLSHAN: Your Honor, if they do recognize a name,
21 we'll all come up here?

22 THE COURT: Yes. I'm going to ask them to approach
23 the bench, and we'll do that up here at the bench, all right?
24 Very good.

25 MR. MAC MAHON: Thank you, Your Honor.

1 (End of bench conference.)

2 THE CLERK: If I call your name, please come forward
3 and have a seat in the jury box: Juror No. 8, Kelsey
4 Brosnahan; Juror No. 68, Vernon Michelsen; Juror No. 89, Kim
5 Stenberg; Juror No. 57, Sandra Khouri; Juror No. 94, Lien Tran;
6 Juror No. 43, Alan Herman; Juror No. 101, Suzanne Yerks.

7 THE COURT: Mr. Herman, you need to go in first. We
8 have to keep you in order here.

9 THE CLERK: Juror No. 70, Rebecca Miller; Juror No.
10 5, Donna Beitzel; Juror No. 30, Steven Frith; Juror No. 78,
11 Nancy Perry; Juror No. 37, Amanda Granlund; Juror No. 42, David
12 Harrison; Juror No. 26, Gregory Fabian.

13 THE COURT: Now, ladies and gentlemen, before we,
14 before we get started, Mr. Wood is going to give each of you a
15 slip of paper that has a list of potential witness names on it.
16 Actually, my law clerk is going to do this for you. I want you
17 each to look at the list of names, and let us know if you
18 believe you recognize any of the names on this list.

19 We need one more for the first row.

20 All right, do each of you have a list? We need one
21 more for the -- yeah.

22 Do any of you recognize any of the names on that
23 list? I'm sorry, if you do, you need to raise your hand.

24 All right, let me start in the front row. Yes,
25 you're Mr. Mickelson?

1 MR. OLSHAN: Your Honor, can we approach?

2 THE COURT: Yeah. I'm sorry.

3 THE PROSPECTIVE JUROR: The name Condaleezza Rice,
4 everybody knows who that is.

5 THE COURT: All right, putting aside Condaleezza
6 Rice, thank you. Other than that, is there any other name?

7 THE PROSPECTIVE JUROR: No, ma'am.

8 THE COURT: Thank you for bringing that to our
9 attention.

10 Ladies and gentlemen, other than Condaleezza Rice,
11 are there any other names on that list that anybody recognizes?

12 (No response.)

13 THE COURT: No? You can return those lists to
14 Mr. Wood, please.

15 THE CLERK: If I call your name, please -- you may
16 exit the courtroom. Please check in with the Clerk's Office
17 before exiting the building.

18 Juror No. 94, Lien Tran; Juror No. 70, Rebecca
19 Miller; Juror No. 89, Kim Stenberg; Juror No. 5, Donna Beitzel;
20 Juror No. 30, Steven Frith; Juror No. 68, Vernon Michelsen;
21 Juror No. 78, Nancy Perry.

22 If I call your name, please come forward and have a
23 seat in the jury box.

24 THE COURT: And, Mr. Wood, as you put the new juror
25 in the box, give them the list, yeah.

1 Juror No. 49, Aaron Hunt; Juror No. 41, Jennie Hamm;
2 Juror No. 11, James Carnes; Juror No. 40, Kathleen Halasz;
3 Juror No. 6, Laura Billings; Juror No. 73, Thuong Nguyen; Juror
4 No. 12, Anne Cassidy.

5 THE COURT: The newly called persons, again, other
6 than Condaleezza Rice, do any of you recognize any of the
7 witnesses on that list that's been given to you?

8 Anybody? No?

9 (Jurors shaking heads.)

10 THE COURT: All right, then the seven jurors who just
11 got the -- get the list from them first.

12 If you'll just hand those up to us, please?

13 THE CLERK: If I call your name, you may exit the
14 courtroom. Please check in with the Clerk's Office before
15 exiting the building. Juror No. 40, Kathleen Halasz; Juror No.
16 11, James Carnes.

17 If I call your name, please come forward and have a
18 seat in the jury box: Juror No. 51, Andrew Ihle; Juror No. 47,
19 Charles Hoffman.

20 THE COURT: And again, Mr. Hoffman and Mr. Ihle, I'll
21 ask you to look at that list and see other than Condaleezza
22 Rice, whether you recognize any of the names on that list. No?

23 (Jurors shaking heads.)

24 THE COURT: No? All right, very good. Hand the list
25 back to Mr. Wood.

1 MR. MAC MAHON: Your Honor, we were blocked. We
2 couldn't see which one was Mr. Ihle when he came in.

3 THE COURT: Mr. Ihle, would you mind standing up?
4 (Prospective Juror Ihle stood.)

5 MR. MAC MAHON: Thank you, sir.

6 THE CLERK: If I call your name, you may exit the
7 courtroom. Please check in with the Clerk's Office before
8 exiting the building. Juror No. 47, Charles Hoffman.

9 If I call your name, please come forward and have a
10 seat in the jury box. Juror No. 83, Gregory Scites.

11 THE COURT: Do you recognize any names, Mr. Scites?
12 (Prospective Juror shaking head.)

13 THE COURT: No? Thank you.

14 THE CLERK: Juror No. 83, Gregory Scites, you may
15 exit the courtroom. Please check in with the Clerk's Office
16 before exiting the building.

17 If I call your name, please come forward and have a
18 seat in the jury box. Juror No. 60, Caitlin Lhommedieu.

19 THE COURT: Ms. Lhommedieu, do you see any names on
20 that list?

21 (Prospective Juror shaking head.)

22 THE COURT: No? All right, thank you.

23 THE CLERK: Juror No. 60, Caitlin Lhommedieu, you may
24 exit the courtroom. Please check in with the Clerk's Office
25 before exiting the building.

1 Juror No. 71, Amanda Morris, please come forward and
2 have a seat in the jury box.

3 THE COURT: Ms. Morris, do you recognize any names?
4 No?

5 THE PROSPECTIVE JUROR: No.

6 THE COURT: All right, thank you.

7 THE CLERK: Juror No. 71, Amanda Morris, you may exit
8 the courtroom. Please check in with the Clerk's Office before
9 exiting the building.

10 Juror No. 74, Scott Oden, please come forward and
11 have a seat in the, in the jury box.

12 THE COURT: Mr. Oden, you don't recognize any names?

13 THE PROSPECTIVE JUROR: No.

14 THE COURT: All right, thank you, sir.

15 THE CLERK: Juror No. 74, Scott Oden, you may exit
16 the courtroom. Please check in with the Clerk's Office before
17 exiting the building.

18 Juror No. 80, Manavi Puri, please come forward and
19 have a seat in the jury box.

20 THE COURT: No, Ms. Puri? No names?

21 THE PROSPECTIVE JUROR: No.

22 THE COURT: All right, thank you.

23 THE CLERK: Juror No. 80, Manavi Puri, you may exit
24 the courtroom. Please check in with the Clerk's Office before
25 exiting the building.

1 Juror No. 76, Mahesh Panwar, please come forward and
2 have a seat in the jury box.

3 THE COURT: Mr. Panwar, do you recognize any names on
4 that list?

5 THE PROSPECTIVE JUROR: Not on the list.

6 THE COURT: All right, thank you.

7 THE CLERK: Ladies and gentlemen of the jury, would
8 you please stand and raise your right hand.

9 (Jurors affirmed.)

10 THE COURT: All right, we have now selected the 14
11 people who will be our jury. I want to thank the remainder of
12 the pool for being here this morning. You are all free to
13 leave at this time. Please leave quietly. Check out through
14 the Clerk's Office. We do appreciate your attendance this
15 morning.

16 I know it's been a long morning, folks, and in about
17 five minutes, I'm going to give you your morning lunch break,
18 all right? But I do want to take just a few minutes to give
19 you some very important instructions.

20 Mr. Panwar and Ms. Brosnahan, if you look to your
21 right, you'll see a series of pads and paper. Since it's going
22 to be a long trial, I'm giving each of you, so if you could
23 just, you know, take and pass them down, a pen and notepad if
24 you want to take notes during the trial.

25 Now, I just need to give you a caution because there

1 actually are a lot of judges who don't let jurors take notes.
2 There's a fear that you'll be so involved in writing things
3 down, you won't be watching the witnesses or really paying
4 attention, and we don't want your note taking to be a
5 distraction, but there are people who find that taking notes
6 helps them keep their attention focused, and it makes them more
7 comfortable when they have to decide something, so we're giving
8 you notebooks.

9 You should understand that your notes are by no means
10 a full record of what the proceedings are. None of you is a
11 trained court stenographer, I don't believe we have any
12 stenographers here, and in any case, you should make sure that
13 you understand your notes are simply an individual memory aid.
14 Your notes are not evidence. They're not to be shared with the
15 other jurors. They're just there to help you.

16 Anytime we have a recess, your notes will be
17 collected by the clerk, and so you should probably put your
18 name so we get the right notebook back to you, and we'll get
19 them back to you at the beginning of each session of the
20 proceedings.

21 Now, I want to give you a little overview as to how a
22 trial is structured so you know what to expect. When we get
23 back from the one-hour lunch break, we will begin with the
24 opening statements. The opening statements are just basically
25 a preview of what each side believes the case will show.

1 You might think about an opening statement like the
2 cover of the box of a jigsaw puzzle. If any of you do those
3 puzzles, you know that the box cover has the completed picture.
4 You put all the pieces together, and this is what you get.

5 But with opening statements, you often get two
6 different box covers, and at the end of the day, it will be
7 your job to decide whether any of those pictures have been met
8 by the evidence in the case.

9 Now, because the government has the burden of proof
10 in a criminal case, the rules allow the government to go first
11 at each stage of the trial, and that means that one of the
12 prosecutors will make the first opening statement, and then
13 defense counsel will have an opportunity to make an opening
14 statement on behalf of the defendant, in other words, to give
15 you a different box cover.

16 After we complete the opening statements, then we are
17 going to begin the evidence portion of the trial, and the
18 evidence in the trial consists of three categories of
19 information. First would be stipulations. When both parties
20 to a lawsuit agree that certain facts are the case and they're
21 not going to put any evidence on to establish that fact, they
22 can stipulate to the fact, and then it's up to you, the jury,
23 whether to accept the fact or not, but there won't be any
24 evidence presented to support that fact because the parties are
25 agreeing that it is the case.

1 The other type of evidence is the testimony of
2 witnesses. Now, with one exception, all the witnesses in this
3 case are going to be -- actually, there are more than one
4 exception. Most of the witnesses in this case will be
5 testifying live in the courtroom from this witness box.

6 As I indicated to you earlier, the first couple of
7 days, we're going to have witnesses who are -- whose identity
8 needs to be somewhat cloaked. Those witnesses you will only
9 hear referred to by their first name and a last initial, like,
10 you know, Suzie S. We will have a large screen across the
11 courtroom. I alerted you earlier that we would be doing that,
12 and you've all told me that wouldn't be a problem for you in
13 evaluating that witness's testimony.

14 When a witness is called, the side that calls that
15 witness first conducts what we call the direct examination.
16 Now, since the government goes first, it's going to call all of
17 its witnesses and put all its evidence on first. So the
18 government will call their first witness, ask all the questions
19 they have of the witness. Then defense counsel will have the
20 opportunity to ask questions of that witness. That's called
21 cross-examination.

22 When the defense attorney has finished with that line
23 of questioning, if the government believes that they need to
24 address some of the issues that came up during the cross, they
25 get a chance to ask another round of questions. That's called

1 the redirect. And defense counsel can actually ask one last
2 round of questions. That's called the recross.

3 Then we're done with that witness. He or she steps
4 down, the next witness comes on, and we will go that way until
5 the government has called all of its witnesses.

6 We are also going to have a witness who will testify
7 via video deposition. In that case, that particular witness
8 has a very serious medical condition and would not be able to
9 safely travel to the courthouse, and so what happened is last
10 week, he was deposed, and that means actually he was in a room,
11 he was under an oath to tell the truth.

12 Lawyers for both sides were present. A video camera
13 was present. A court stenographer was present. I was actually
14 present at a distant location. The defendant, Mr. Sterling was
15 in the room. And that man was asked questions by both the
16 prosecutor and the defense in exactly the same order: direct
17 exam, cross, redirect, recross.

18 So you will have that testimony, and I believe there
19 may be another witness coming in via a transcript. Again, all
20 that testimony that you have was done with the witness being
21 under oath. You are at a disadvantage in not having in some
22 cases the witness physically in the courtroom, but you're to
23 give that testimony such credibility as you are able to.

24 In any case, once the government has put on all of
25 its witnesses, the other thing the government will do during

1 its case-in-chief is move various exhibits -- physical
2 exhibits, documents, copies of cables, that sort of thing --
3 into evidence. I believe chapter 9 of the book will be going
4 into evidence.

5 When the government has put all of its evidence in,
6 you will hear the prosecutors say that they rest. That means
7 they believe they've put on all of their evidence.

8 Then we turn to the defense. Now, in a criminal
9 case, because the defendant begins the trial with a presumption
10 of innocence, there is absolutely no obligation on a defendant
11 to put on any evidence whatsoever because it's the government's
12 burden to prove a defendant guilty. It is not -- there is no
13 burden on a defendant to prove his innocence. That's not our
14 legal system. So the defense may put on evidence, or it may
15 choose not to.

16 If the defense does call witnesses, then we just
17 reverse the order; in other words, either Mr. Pollack or
18 Mr. MacMahon will ask the first line of questioning, that's the
19 direct examination; then the prosecutors can cross that
20 witness; and then if the defense counsel feel that something
21 came up during cross that they need to further address, they
22 have the redirect; and then the government can do a recross if
23 they feel it's necessary; and we go that way until the defense
24 has produced whatever evidence the defense wants to.

25 Lastly, the government does get a chance to rebut

1 that evidence if they want to put on a rebuttal case, in which
2 case we will then shift back with the government calling its
3 witness and doing the direct exam, and we'll go that way until
4 all the evidence is in.

5 Now, during the course of the trial, a lawyer may
6 object to a question that's being asked or to an answer that's
7 being given, and it's a lawyer's job to object when the lawyer
8 believes that something is happening in the trial that violates
9 some rule of law or some ruling that the Court has made, or in
10 this case, because we have potentially some classified
11 information, if there's a classification issue that has to be
12 addressed, and it's going to be my job as the judge to rule on
13 the objection.

14 Now, if I think that the objection has a good basis,
15 I will either say that I'm granting the objection or the
16 objection is sustained, and those words mean the same thing.
17 On the other hand, if I don't think that there's any problem, I
18 will either say "Objection overruled" or "denied," and those
19 words mean the same thing.

20 You must be careful not to draw any inference against
21 a party who may have made an objection or try to draw any
22 inference from my ruling. The fact that a court grants or
23 denies an objection doesn't mean the court thinks that that
24 side should win or lose the case. It's much like a referee or
25 an umpire during a sporting event that simply calls a play the

1 way that person thinks it should be called and doesn't do it to
2 help one side or to hurt the other.

3 Now, once all the evidence is in, the next phase of
4 the trial is what we call closing argument. That's the time
5 when the lawyers are trying to argue from the evidence
6 presented during the trial to the ultimate conclusions they
7 want you to reach. Again, the government goes first because it
8 has the burden of proof; then the defense makes its closing
9 argument; and because of the burden of proof being so high on
10 the government, they are allowed to make the final argument,
11 which is called a rebuttal.

12 Then it becomes my job as the judge to give you the
13 legal instructions that you must use in deciding the case. I
14 will give those to you orally in court, but you will also have
15 written copies of those instructions that you will be able to
16 take into the jury room when you go to consider this case.

17 Now, it's extremely important that jurors follow
18 certain rules of conduct. The first rule of conduct is, No. 1,
19 you should not start deciding any issue in this case until you
20 have heard all the evidence, all the arguments of counsel, and
21 gotten the instructions from the Court, and that means that
22 when you're on a break or a recess, you can get to know each
23 other, you can talk about the weather, about football season,
24 whatever you want to talk about. Do not talk about the trial
25 because we don't want you to start making up your mind about

1 issues. You know, if you start to make up your mind and then
2 more evidence comes in down the road, you may not be able to
3 fully evaluate that evidence or change your mind about it, so
4 it's important to keep an open mind.

5 It's also extraordinarily important to make sure that
6 your thought process is not contaminated by anything outside of
7 this courtroom, so since you're going to be here for many days
8 and there are lots of people in the courthouse, you may be
9 standing in line in the cafeteria downstairs and hear two
10 people talking about the case, or you may bump into one of the
11 prosecutors or defense counsel or somebody who's previously
12 testified.

13 You should stay away from any of those contacts. If
14 you think you've overheard something, you need to get away from
15 it and bring it immediately to my attention.

16 If you bump into one of the lawyers in an elevator
17 and the lawyer is sort of rude, tries to avoid eye contact or
18 the normal human reaction of smiling when you see somebody you
19 recognize, do not take that as an insult. The attorneys are
20 trying to avoid any appearance of an out-of-court contact with
21 a juror which could be a problem, so please understand that.

22 It's also extremely important in this age of the
23 Internet and electronic communications that you understand you
24 are not permitted to tweet, e-mail, or in any respect
25 correspond with anybody, including any other jurors, about this

1 case. When you go home tonight, you can tell your family or
2 colleagues, you know, "I'm on jury duty. I'm going to be stuck
3 in Alexandria for the next two or three weeks."

4 If they say, "What are you hearing?"

5 "I can't talk about it. The judge told me I can't
6 discuss the case."

7 Because if you start to talk about the case, I
8 guarantee you, because Americans love trials, and criminal
9 trials especially seem to fascinate us, they're going to ask
10 you questions or give you their two cents' worth about the
11 case, and that's going to start contaminating your thought
12 process, so you must avoid that.

13 You may be curious about things that come up during
14 this case, but you cannot conduct any investigation. That
15 means you can't go on the Internet and look up Mr. Risen or
16 other articles he may have written. You can't look up this
17 book. You can't look up anything about this case.

18 And there will most likely be some media coverage of
19 this case. I'm not prohibiting you from reading *The Washington*
20 *Post* or *The Times* or whatever you read, or going on the
21 Internet and looking at news articles, but they cannot involve
22 this case or any issues that might be related to this case.

23 So any case -- any information about leaks, anything
24 about the Iranian nuclear program, even CIA, stay away from for
25 the next two or three weeks. It shouldn't kill anybody to

1 avoid that kind of news. But you could read the sports page,
2 you could read the theater page, you could read, you know,
3 about the mess on the subway, but just stay away from anything
4 that could possibly contaminate your thought process.

5 We're going to take the break at this point. Again,
6 leave your notebooks with your names on them on your chairs.
7 We'll get them back to you.

8 You're not frozen to your seat. You're welcome to
9 sit anyplace in the jury box. When we come back from the lunch
10 break -- and I'm going to give you until 2:00 today, and when
11 we come back, as I say, we will start with the opening
12 statements. All right?

13 So I'm going to let the jury go. I want to keep
14 counsel here for one minute for some housekeeping matters, but
15 you can go with Mr. Wood. He'll take you into the jury room.

16 (Jury out.)

17 THE COURT: All right, any objection to the Court's
18 preliminary instructions to the jury?

19 MR. TRUMP: No, Your Honor.

20 THE COURT: Anything from the defense?

21 MR. MAC MAHON: No, Your Honor.

22 THE COURT: All right, you-all have a seat for just
23 one second.

24 It's come to my attention, and you're going to need
25 to take a minute or two with Ms. Gunning about the exhibits,

1 all right? Defense counsel raised an issue earlier that
2 apparently the exhibit books are marked with a big "Secret" on
3 top.

4 MR. MAC MAHON: I did, Your Honor. I just -- and
5 there's dozens of them, and I think this is unduly suggestive.
6 There must be some other way to do this other than a bright red
7 flag.

8 THE COURT: I want counsel to get with Ms. Gunning
9 during the break and figure out how you're marking these
10 exhibits, but also, I want to make sure that anything that's
11 being entered into evidence is in its proper format. That's
12 all I think I need to say to you at this point, all right?

13 I assume the parties want a rule on the witnesses?

14 MR. MAC MAHON: Yes, Your Honor.

15 THE COURT: All right. That means that other than
16 the case agent from the FBI and, of course, the defendant, no
17 other witness who's going to testify in this case may be in
18 court while testimony is being taken. People who are in court
19 cannot be discussing with people outside of the courtroom who
20 are going to be witnesses the testimony that's been going on.

21 Everybody clear about that? All right.

22 MR. MAC MAHON: Other than as to Mr. Lang, Your
23 Honor, who is an expert witness, and Mr. Manners, who is in a
24 sense an expert, but no expert witness can watch the other
25 expert witnesses testify.

1 THE COURT: I thought we went through that before in
2 this case, but do both sides want their experts able to sit in
3 the courtroom and hear testimony?

4 MR. TRUMP: Your Honor, we would ask -- we have a
5 rebuttal expert, Mr. Duelpfer, who has no other role in the
6 case other than to hear what Mr. Lang has to say and rebut it.
7 I would object to having Mr. Manners hear testimony. He's been
8 in the grand jury. He may have factual evidence as it relates
9 to the whole Risen issue. There are a lot of things going on
10 with Mr. Manners, I don't think he should sit here and listen
11 to testimony.

12 MR. MAC MAHON: We'll withdraw as to Mr. Manners,
13 Your Honor.

14 THE COURT: All right, so just Lang and your
15 rebuttal?

16 MR. TRUMP: Mr. Duelpfer.

17 THE COURT: Mr. Duelpfer and Mr. Lang can stay in the
18 courtroom.

19 MR. TRUMP: And Mr. Duelpfer would only be here for
20 Mr. Lang.

21 THE COURT: All right, that's fine. All right,
22 shouldn't be a problem with that.

23 All right, anything else before we get started?
24 Forty minutes more or less for the opening statements.

25 Any other issue?

1 MR. MAC MAHON: No, Your Honor.

2 THE COURT: No?

3 MR. MAC MAHON: Not from defense.

4 MR. TRUMP: What time are we coming back?

5 THE COURT: 2:00.

6 MR. TRUMP: 2:00.

7 THE COURT: All right. Very good, we'll recess court
8 until then.

9 (Recess from 1:00 p.m., until 2:00 p.m.)

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1 A F T E R N O O N S E S S I O N

2 (Defendant and Jury present.)

3 THE COURT: All right, Mr. Trump, are you making the
4 opening?

5 MR. TRUMP: Yes, Your Honor.

6 THE COURT: All right.

7 OPENING STATEMENT

8 BY MR. TRUMP:

9 May it please the Court, defense counsel.

10 Again, my name is Jim Trump. It's my pleasure with
11 Eric Olshan and Dennis Fitzpatrick to represent the United
12 States in this case.

13 The defendant, Jeffrey Sterling, once worked for the
14 Central Intelligence Agency, the CIA. He was a case officer, a
15 spy if you will. He had access to classified information, Top
16 Secret, Secret files, and as you will learn, between 1998 and
17 2000, the defendant was assigned to a very closely held and
18 highly classified operation involving Iran and its nuclear
19 weapons program.

20 He was responsible for the safety and security of a
21 very valuable human asset working with the CIA on that
22 operation, a Russian nuclear weapons engineer whose role in the
23 operation and whose association with the CIA was a closely
24 guarded secret.

25 When the defendant went to work with the CIA, he

1 promised never, ever to disclose its secrets. He promised in
2 writing to guard and protect forever the classified information
3 with which he was entrusted, and he broke that promise. The
4 defendant betrayed his country; he betrayed his colleagues; he
5 betrayed the CIA and compromised its mission; and most
6 importantly, he betrayed the Russian asset, a man who literally
7 placed his trust and his life into the defendant's hands.

8 And why? Anger, bitterness, selfishness. The
9 defendant struck back at the CIA because he thought he had been
10 treated unfairly. He had sued the agency for discrimination
11 and demanded that they pay him \$200,000 to settle his claim.
12 When the agency refused, he struck back with the only weapon he
13 had: secrets, the agency's secrets.

14 The defendant is charged in a ten-count indictment.
15 At its core, the indictment charges the defendant with having
16 disclosed what is called national defense information. He
17 disclosed it to a reporter, James Risen in *The New York Times*,
18 first in March and April of 2003 and then again between 2004
19 and 2005. The national defense information at issue in this
20 case was then passed on to the public with the publication of
21 Mr. Risen's book, *State of War*, in early 2006.

22 The case will, excuse me, the case will unfold
23 essentially in two somewhat overlapping parts. First, to
24 understand the case and to prove to you that the information
25 disclosed by the defendant to Risen and eventually revealed

1 publicly in chapter 9 of his book is under the law of national
2 defense information, you will need to know what this operation
3 entailed, the significance of the human asset used in the
4 operation, and what the defendant knew and didn't know about
5 it.

6 You will hear testimony from a number of CIA case
7 officers about the operation, which we will call Classified
8 Program No. 1, as well as recorded testimony from the human
9 asset himself, whom will be called Human Asset No. 1, or
10 Merlin.

11 Second, you will need to know how the CIA became
12 aware in 2003 that the classified program, Program No. 1, was
13 compromised. William Harlow, the former director of CIA's
14 Office of Public Affairs, will testify about telephone
15 conversations with Risen in April 2003 and a subsequent White
16 House meeting between the national security advisor,
17 Condoleezza Rice, and *The New York Times*.

18 You will also learn that the defendant had a source
19 relationship with James Risen in 2002; and the defendant's
20 relationship with Risen continued through 2004 and 2005 with
21 e-mails and telephone calls back and forth until the book's
22 publication in January of 2006; and at that point, the
23 relationship ended.

24 Finally, you must know why, why this is important,
25 why the compromise of the operation and the compromise of

1 Merlin potentially damaged national security.

2 The defendant worked for the CIA from 1993 through
3 January 31, 2002. As I mentioned, he was trained and deployed
4 as a case officer; and as such, he understood the importance of
5 protecting a human asset's relationship with the CIA and the
6 importance of maintaining the secrecy of a CIA operation such
7 as Classified Program No. 1. He had spent some time overseas,
8 and he also developed a specialty in Iranian affairs. In 1998,
9 the defendant was assigned to the agency's Counterproliferation
10 Division at its Langley headquarters.

11 In October 1998, the defendant was asked to take over
12 as the case officer for Classified Program No. 1, which meant
13 moving to New York, which he did in early 1999. From that
14 time, early 1999 until May of 2000, he served as the case
15 officer for the operation, and he personally was responsible
16 for the Russian engineer Merlin.

17 In October 1998, Classified Program No. 1 was already
18 two years old. It was designed to gather intelligence about
19 Iran's nuclear weapons program, an intelligence priority for
20 the CIA. In a nutshell, the CIA thought it could exploit
21 Iran's interest in acquiring nuclear technology.

22 With the help of a second Russian engineer, the
23 agency and the National Laboratory developed a set of very
24 sophisticated plans, plans for a Russian-designed fire set, a
25 key component to a detonation system of a nuclear weapon. The

1 National Laboratory embedded secret flaws into the plans so
2 that the fire set would never work. In other words, the plans
3 would appear genuine; but if Iran took the bait, it could spend
4 huge amounts of time and money trying to develop a fire set
5 that could not work and, in the process, hopefully convey
6 important information to the CIA about the status of its
7 nuclear weapons program.

8 But the CIA needed a salesman, someone who could pose
9 as a greedy Russian engineer seeking money for the fire set
10 plans, and Merlin fit that role exactly. He had, in fact,
11 worked for the former Soviet Union and Russia as a nuclear
12 weapons expert in its nuclear weapons facility; and he was an
13 expert in the assembly of nuclear warheads. He had emigrated
14 with his family to the United States several years earlier and
15 subsequently began working with the CIA.

16 When the defendant first became involved in the
17 operation, another case officer, Zach W., was responsible for
18 Merlin. Zach W., however, was taking a new assignment; so a
19 meeting was planned to introduce Merlin to his new case
20 officer, the defendant. The CIA decided to use this meeting as
21 an opportunity to show Merlin for the first time the fire set
22 schematics, the bait for the Iranians, and explain to him in
23 more detail how the operation would work.

24 They met in San Francisco at a hotel in January 1999:
25 Robert S., known to many in the operation as Bob, the manager

1 of the program from the Counterproliferation Division; Merlin;
2 the defendant; Zach W.; and Len, another CIA officer. They
3 showed Merlin the documents that Merlin would offer the
4 Iranians, the fire set schematics and a parts list.

5 Merlin studied the plans and quickly noticed that the
6 schematics were missing several key components, and that was
7 intentional. The plan was for Merlin to hold back some
8 information so that the Iranians would come pay him for the
9 complete plans. Merlin never, never spotted the deeply
10 embedded hidden flaws in the plans. Indeed, that would have
11 been impossible.

12 The second Russian engineer, the one who designed the
13 plans, had been unable to spot them; and a team of scientists
14 from the National Lab spent hundreds and hundreds of man-hours
15 pouring over the plans before detecting even some of the flaws.

16 Following the San Francisco meeting, the defendant
17 and Robert S. worked with Merlin when trying to find inroads
18 into the Iranian scientific community. Under Zach W.'s
19 direction, Merlin had already been out there on the Internet,
20 so to speak, trying to reach out to Iranian scientists or
21 academics who might seem interested in what he was offering.

22 The defendant continued that effort with Merlin. You
23 will see numerous CIA cables in which the defendant reported on
24 the progress being made by Merlin along with copies of e-mails
25 and suggestions for ways for Merlin to improve and hone his

1 approach. They also worked on a letter that would accompany
2 the fire set schematics, exchanging several drafts and having
3 Merlin work on ways to improve the sales pitch to the Iranians.

4 Now, this letter is important because a copy of it
5 appears in chapter 9 of Risen's book. The letter is completely
6 mischaracterized in that book as something Merlin hastily did
7 on his own ostensibly to warn the Iranians about the hidden
8 flaws in the schematics, when, in fact, it was a letter that
9 the defendant and Merlin worked on for months.

10 The letter simply reconfirms Merlin's offer. He has
11 a fire set. The plans -- he has fire set plans, but they are
12 incomplete. If the Iranians want the complete package, they
13 will have to pay him.

14 In late 1999, Merlin's sales pitch on the Internet
15 paid off; and an Iranian official expressed interest in what he
16 was selling. A delivery was planned for Vienna, Austria, in
17 early 2000. Merlin and the defendant worked on the finishing
18 touches of the letter in January.

19 Merlin flew to Vienna, Austria, at the end of
20 February 2000. He went with his wife, playing the role of a
21 tourist. He carried the fire set plans with him. The letter
22 he stored electronically on a disk so he could print it out
23 once he got to Vienna, to his Vienna hotel. Once in Vienna,
24 everything went pretty much as planned, and Merlin delivered
25 the package to the Iranian mission of the IAEA, the

1 International Atomic Energy Association, together with his
2 letter, and he returned to the United States.

3 Back in New York, the defendant and Robert S. briefed
4 Merlin on his trip. At that time, the CIA had intelligence
5 that the plans had been taken from Vienna to Iran; but Merlin
6 had not yet been contacted by anyone about his delivery.

7 In May 2000, however, the defendant was being
8 replaced in New York by another agent, another case agent --
9 excuse me, case officer, Stephen Y. The defendant's role in
10 the operation was over, and he no longer had access to its
11 files, to its cables, any documents or information about
12 Merlin, and the future of the operation.

13 Now, at this point, no one had raised any concerns
14 about the operation, particularly concerns that we were giving
15 away nuclear technology. In fact, the lab had certified to the
16 CIA that that could not happen. No concerns within the
17 Counterproliferation Division; no concerns among senior
18 management, case officers, Merlin, the National Laboratory; and
19 significantly, no concerns expressed by the defendant.

20 The defendant expressed no such concerns to his
21 management in New York, to the inspector general. Nothing came
22 up in his personnel evaluations. Even during his litigation
23 with the agency, he never expressed any concerns that this was
24 a bad operation, a flawed operation, in any respect. Indeed,
25 when he took an employment grievance to the House Select

1 Committee on Intelligence, not a word, not a word was said
2 about Classified Program No. 1, nothing.

3 That all changed on March 5, 2003. Just after the
4 CIA had rejected his settlement offer of \$200,000, the
5 defendant met with two Senate staffers, Don Stone and Vicki
6 Divoll, both who will testify later during this trial. The
7 defendant described generally Classified Program No. 1; but for
8 the first time, for the first time, he says the program was
9 mismanaged. He claims that the Russian had been able to find
10 the flaws in the plans. Iran might be able to spot these flaws
11 as well, fix them. He was worried that the CIA may have given
12 Iran nuclear weapons technology. That's when everything
13 changed.

14 On April 3, 2003, William Harlow, the CIA's director
15 of Public Affairs, was called by James Risen. They talked by
16 phone. Risen told Harlow he was working on a story, and he
17 wanted comment. The story involved a Russian engineer trying
18 to sell flawed fire set plans to the Iranians. He had a real
19 CIA cryptonym, a code name, for the human asset, the one that
20 we will be calling Merlin.

21 Harlow knew that that was very, very rare for someone
22 outside the agency to have that type of information. Risen
23 said the plans were delivered to the Iranians at the IAEA
24 mission in Vienna in 2000, but Risen was not sure if the
25 operation was still ongoing.

1 Risen made a number of follow-up calls to Harlow. He
2 said the story was in near final form. He had documents, he
3 said; and he said the program had not been handled properly.
4 Iran had been told that the designs were flawed, and the
5 Iranians might be able to fix the flaws. He also was aware
6 that the case officer had been to see the Senate committee.

7 Sound familiar? With the very same pitch, the same
8 spin that the defendant had put on the operation with SSCI, the
9 Senate Select Committee on Intelligence, Risen was now telling
10 the CIA, William Harlow, its director of Public Affairs.

11 Harlow did some research. He alerted his superiors.
12 He had learned that there was such a program like the one Risen
13 described, but it was hardly flawed. More importantly, unknown
14 to Risen, it was ongoing.

15 The next thing that happens, Harlow is headed to the
16 White House for a meeting with *The New York Times*. There with
17 George Tenet, the director of the CIA; and Condoleezza Rice,
18 the national security advisor for the President; *The New York*
19 *Times* editor, Jill Abramson; and Mr. Risen, Dr. Rice set out a
20 set of talking points prepared by Harlow and which she went
21 over with Ms. Abramson and Mr. Risen. She asked them not to
22 publish. She said lives were at stake. She said it would harm
23 the U.S. efforts to stop the spread of nuclear weapons.

24 At the meeting, Risen reiterated they had documents,
25 a letter, a letter written by the Russian asset to the Iranians

1 warning them of the flaws in the plans.

2 Director Tenet corrected Risen. Russians told the
3 Iranians -- excuse me, the Russian told the Iranians that the
4 plans were incomplete, not that they were flawed.

5 *The New York Times* said they would get back in a week
6 or so. A week later, *The New York Times* informed the White
7 House and the CIA that it would not publish the story.

8 It was sort of a case of winning the battle but
9 losing the war because Risen ended up publishing the story but
10 not through *The New York Times*. He put his article into a
11 book, *State of War*, in January 2006; and what appears in
12 chapter 9 of *State of War* closely tracks what Risen told Harlow
13 in April of 2003.

14 The chapter had pretty much the same spin. While it
15 reports the basic outline of the classified program accurately,
16 Risen claims that Merlin found the flaws in the plans at the
17 San Francisco meeting; and according to the book, Merlin was so
18 concerned that he was handing over nuclear secrets to the
19 Iranians that he tried to warn them of the flaws in the plans
20 by hastily drafting a letter to that effect while in Vienna.

21 The book quotes nearly verbatim from the draft of the
22 letter that the defendant copied into a CIA cable months before
23 the trip to Vienna. That book also claims that the case
24 officer of the defendant was also concerned about the way the
25 program was handled and concerned that the operation may have

1 given away valuable nuclear secrets.

2 Now, the evidence that the defendant was Risen's
3 source will unfold in several ways. There is motive: his
4 litigation with the CIA. It began in 2000, just after he left
5 Classified Program No. 1. It continued through April 2003,
6 just when Risen is talking to Harlow about his story.

7 The basis of the defendant's claims is -- was that he
8 was discriminated against because of his race. He was bitter.
9 He was angry. He was seeking revenge.

10 For example, on January 7, 2003, he told a CIA
11 employee that he was disgusted with the CIA, and as a result,
12 he would come after them with everything at his disposal.

13 January 27, 2003, and then again on February 12 of
14 2003, offers to settle the litigation were rejected. The CIA
15 just said no. Fifteen days later, the defendant called James
16 Risen at his residence.

17 Shortly after that was the Senate meeting that I just
18 discussed, and key to that was that the only person to have
19 ever said that the Russian spotted the flaws in the plans, an
20 impossibility as explained before, the only person who ever
21 said that we were giving plans to the Iranians that may have
22 aided their nuclear weapons program was the defendant and James
23 Risen.

24 The defendant was also a source for Risen. On
25 October 30, 2001, during litigation, the CIA rejected a

1 previous offer by the defendant, \$200,000. Four days later,
2 November 4, 2001, *The New York Times* publishes an article by
3 Risen discussing the destruction of the CIA's New York office
4 in the 9/11 attacks. The existence of that office, the office
5 in which the defendant worked, was a classified fact. A short
6 time later, the defendant tells a colleague at the CIA that he
7 had confirmed the existence of the CIA's New York office to a
8 newspaper or magazine; she wasn't sure which.

9 March 2, 2002, Risen publishes a story in *The New*
10 *York Times* about the defendant's discrimination lawsuit. Risen
11 publicly confirmed that the defendant was his source, and he
12 quoted from the defendant extensively.

13 I lost a note, Your Honor. If I may?

14 In addition to the litigation, the facts of the book,
15 the facts of chapter 9 will also reveal to you that the
16 defendant was a source for James Risen. First, the book is
17 written from the perspective of a case officer. The case
18 officer who was the case officer between January of 1999
19 through the Vienna trip up until May of 2000, that case officer
20 was the defendant. The perspective of the book, the case
21 officer, only knows the information from that period. Risen
22 only knows the information from that period.

23 The book discusses the case officer's involvement in
24 the operation, quotes the conversation between the case officer
25 and a senior, a senior case officer, Robert S. The only

1 persons to have communicated together at the San Francisco
2 meeting were Robert S. and the, and the defendant.

3 The book quotes -- excuse me, the book describes
4 extensively the San Francisco meeting. It describes Merlin,
5 the other case officers, what happened at the meeting; but it
6 also has facts that aren't otherwise recorded in CIA documents
7 and cables.

8 For example, the book explains that Merlin and the
9 case officer went on a wine trip in Sonoma County, California.
10 The only persons to know about that fact were Robert S., the
11 case officer, Merlin, and Mrs. Merlin.

12 As you go through the book, as you will, you will see
13 that each of the facts that are reiterated in the book by
14 Mr. Risen were facts known to Mr. Sterling. They were facts
15 known only to the case officers who were working on the
16 operation at that time and then found their way to Mr. Risen.

17 But they're also facts discussing the operation that
18 are not otherwise known to case officers or to Mr. Robert S.
19 For example, the book quotes from the defendant's PAR, his
20 performance appraisal report. That is not a document from the
21 operation. That is a document that is reviewed with the
22 defendant by his New York management. People like Robert S.
23 and the other case officers have no access to that document.

24 But what's further instructive is that document does
25 not on its face link the operation to the human asset at issue.

1 Yet in the book, Mr. Risen quotes from that document and links
2 it to operation, Classified Program No. 1.

3 In addition to facts in the book that were known to
4 Mr. Sterling, the defendant, there are also facts not in the
5 book that were not known to the defendant, in other words,
6 facts that were known to other case officers, other people
7 working on the operation, the people within management that
8 they knew about the operation.

9 For example, the book speculates about whether the
10 operation continued beyond 2000. You will hear testimony that
11 it did. You will hear testimony that there were similar
12 operations that followed the Vienna operation, operations which
13 the defendant knew nothing about and, hence, Mr. Risen knew
14 nothing about.

15 You will also learn, for example, that Merlin never
16 did, in fact, hear back from the Iranians. Again, that's
17 something that Risen speculates about because the defendant
18 knew nothing about that.

19 In addition to the facts of the book, you will also
20 see a pattern between Risen and the defendant extending from
21 2004 -- excuse me, extending from 2003 up through and including
22 the end of 2005, when the book is published. This pattern
23 shows a number of telephone calls, e-mails interspersed with
24 telephone calls in which they discuss the fact that Risen is
25 working on his book. For example, in early January, Risen

1 reached out to defendant via e-mail and says, "Can we get
2 together in early January? Jim."

3 Thereafter, in 2004, you will see a steady stream of
4 e-mails and contacts between James Risen and the defendant. On
5 February 9, 2004, again on April 24, 2004, he calls the
6 defendant, James Risen calls the defendant 14 times and then
7 sends an e-mail from his personal account to the defendant's
8 personal e-mail account.

9 This pattern of e-mail contact continues through May,
10 interstate telephone calls from Risen again to the defendant
11 and e-mails from Risen on his personal e-mail account to the
12 defendant's personal e-mail account. One such e-mail says,
13 "I'm sorry if I've failed you so far, but I really enjoy
14 talking to you and would like to continue."

15 Again, this evidence will show that there's a
16 pattern, a pattern of communication between the defendant and
17 Risen extending from 2004 up through the publication of the
18 book in early January 2006, and that that pattern ends.

19 Finally, the government must also show you as part of
20 its burden that the disclosures made by the defendant to James
21 Risen, disclosures that ultimately made their way to the
22 public, were potentially damaging to national security. There
23 will be witnesses, CIA officers with experience who will
24 testify that these, these disclosures were potentially damaging
25 in a number of ways.

1 First, the asset. The disclosures put his life in
2 jeopardy, his life and the life of his family. They
3 compromised the CIA's ability to use him in the future. He was
4 a very unique asset: a real Russian nuclear weapons expert.
5 They don't come by those very often, but the disclosures in
6 *State of War* in 2006 caused the CIA to bring his use to a halt.

7 They also compromised the methods used in the
8 operation. They compromised the fact that now that, now that
9 this was in the book, the way the operation was conducted, the
10 use of the labs, the science behind the schematics, all those
11 methods were now compromised. Again, the arena of nuclear
12 technology and those countries wishing to exploit nuclear
13 technology is not that big. This loss of intelligence was a
14 serious compromise for the agency.

15 And finally, the CIA's ability to recruit assets, to
16 keep people cooperating once they begin cooperating with the
17 CIA, was damaged. When assets, when foreign intelligence
18 services, when people working with the CIA pick up a book and
19 they read about the compromises in this case, it's a loss of
20 intelligence. It makes them pause. It makes them wonder if we
21 can ever keep our secrets.

22 My time is coming to an end. It's a fairly complex
23 case. The evidence will come in piece by piece. You will hear
24 a number of case officers who only have a certain share of the
25 information, and that is part of the way the CIA

1 compartmentalizes its operations. This was a limited access
2 operation. Only those who participated in the operation were
3 allowed to have access to its documents. Once they were out,
4 they were out for good.

5 So we have to put on case officer after case officer
6 after case officer to explain what they knew and what the time
7 frame was for their knowledge, and you will see at the end that
8 the only case officer, the only person who knew what is
9 published in that book in chapter 9 and who knew the details
10 that were in the book and what was not in the book, what was in
11 the cables, what was not in the cables, is Jeffrey Sterling.

12 Thank you very much.

13 THE COURT: All right, Mr. MacMahon?

14 OPENING STATEMENT

15 BY MR. MAC MAHON:

16 May it please the Court. Thank you, Your Honor.

17 Ladies and gentlemen of the jury, counsel.

18 My name, ladies and gentlemen, is Edward MacMahon;
19 and I'm one of the attorneys here representing Jeffrey Sterling
20 in this case. As the judge told you, Mr. Sterling has entered
21 a plea of not guilty to these charges.

22 With me is Barry Pollack, who will do a lot of the
23 talking as well, and Mia Haessly. So you'll hear from all of
24 us. There's no rhyme or reason as to who's going to get up and
25 speak.

1 What I -- I want you to remember, you've actually
2 been picked to do an interesting case. Lots of time as trial
3 lawyers, we have to look at jurors and argue about breach of
4 contracts; and other cases are car wrecks, some of the ones we
5 heard about in voir dire; but this is a very interesting case;
6 and one of the reasons is because the subject matter we're
7 dealing with is very important; but the person this is the most
8 important to is Jeffrey Sterling and his wife, who is in the
9 courtroom with him.

10 Mr. Sterling is an extraordinary man. He's not a
11 traitor. He's not even -- he's a wonderful man who has never
12 betrayed his country or done anything of the sort, and you will
13 hear no evidence of that at all.

14 Who he is? He's the first person in his family to
15 graduate from college is who he is. He's a man who in 1993
16 went to work for the CIA because he was a patriot, because
17 that's what he wanted to do; and he's a man who then went to
18 law school after he worked there -- while he was at the CIA and
19 thereafter; and at the time he was arrested, which was in 2010
20 on these charges, he was working as a health care fraud
21 investigator, working with United States attorneys
22 investigating health care fraud; and since that time, he's been
23 unemployed and unemployable.

24 And what we need is for you folks to listen very
25 closely to this case and listen for evidence. I didn't really

1 hear any evidence in that opening, a promise of any actual
2 evidence in this case other than a lot of suspicion; but we're
3 going to ask you to find him not guilty and let Mr. Sterling
4 get on with his life with him and his wife in Missouri, where
5 they live.

6 And, ladies and gentlemen, I won't ask you to do that
7 out of sympathy for Mr. Sterling. That's no reason at all to
8 acquit somebody in a criminal case.

9 What I want you to do is to listen very closely for
10 any direct evidence that the government has at all that
11 Mr. Sterling leaked any information, any classified information
12 about Merlin or Classified Program No. 1, whatever it is. You
13 didn't see an e-mail that came up. You're not going to see or
14 hear a phone call. You're not going to hear anything, and
15 that's because it doesn't exist.

16 Mr. Trump is a fine lawyer. If he had an e-mail with
17 details of these programs or a phone call, you would have heard
18 it; and you're not going to hear it in this case. So what we
19 really have is a cloud that needs to be lifted off of
20 Mr. Sterling.

21 This process has been going on for 13 years. This is
22 how long this has been going on. As I say, Mr. Sterling was
23 gone -- has been gone from the CIA for almost 15 years. We
24 could have had jurors in this case -- you're going to hear
25 evidence come in from cables that were written by the CIA when

1 we could have had jurors who weren't even born. Some of this
2 stuff happened during the early Clinton administration.

3 And the reason I want to emphasize this fact for you
4 is that as jurors, you get to decide who's telling the truth
5 and who really remembers what happened in a conversation in
6 2000 or 1999; and think for yourself the detail with which you
7 could remember incidents that took place 15 and 20 years ago.

8 And there's one other thing I want you to keep in
9 mind as you hear this case. You can hear in Mr. Trump's voice
10 a disdain for Mr. Risen's book. It's not, it's not hard to
11 miss, okay? The CIA is angry, and you're going to hear people
12 say: That's false. That's a lie. That never happened.

13 And this is not a -- a criminal case is not a place
14 where the CIA goes to get its reputation back, okay? This is a
15 case to decide whether Mr. Sterling disclosed information to
16 Mr. Risen. You'll keep hearing witness after witness say that
17 when they accused the CIA of a botched operation, that was a
18 terrible thing to say.

19 And in that regard, what I want you to also remember,
20 because this is important as to how this book ends up being
21 written, is that a lot of these events take place in the, in
22 the build-up to the, to the Iraq war; and we all know that was
23 a time when the same CIA at this exact same time was telling us
24 all that there were weapons of mass destruction in Iraq; and we
25 all know, sadly, how true that claim was.

1 And so in the middle of this literal food fight
2 between Mr. Risen and the CIA sits Jeffrey Sterling; and he
3 needs you to perform a jury service, which is to decide his
4 case and form a check against the government that's been making
5 these claims against him for years.

6 And I will tell you now, and you can hold me to this,
7 that the evidence will be that Mr. Sterling never spoke about
8 his experiences in this program or about Merlin to a single
9 person who wasn't entitled to know it, not a single person. I
10 didn't hear -- Mr., Mr. Trump told you that he spoke to Risen.
11 Did you hear where, when, or anything about what happened? No.
12 That's because there isn't any such evidence of it whatsoever.

13 The government will produce no direct evidence
14 whatsoever of a single communication.

15 It won't produce any evidence that anything happened
16 here in the Eastern District of Virginia. The judge is going
17 to tell you at the end of the case that you have to find that
18 something, the disclosure was made here in the Eastern District
19 of Virginia.

20 Nothing happened here. Even in the opening
21 statement, we didn't hear that that happened.

22 And so let's back up a little bit. So Mr. Trump
23 tells you that Mr. Sterling is angry and mad at the CIA, and he
24 files a discrimination case.

25 Well, he did. You're going to see a lot of the

1 pleadings, these stacks of documents. A lot of them are
2 documents from this case. And what is that? That's
3 Mr. Sterling exercising his right to file a lawsuit, and he did
4 it. He followed the law in every way until the case was
5 dismissed, yes, by the CIA, claiming national security, that
6 Mr. Sterling's discrimination case could not be heard because
7 it would infringe upon national security.

8 And I say that -- we're going to get a screen here;
9 and we're going to hear people's names and everything; and I
10 beseech you -- the judge has asked you if you won't consider
11 this as evidence of all the importance and the security.
12 Nobody wants a witness to be disclosed, but you need to -- just
13 because we can't call these witnesses by their names and you're
14 looking at redacted documents, it's just part of this process.
15 It's going to prove nothing to you.

16 But when you see it, it's going to look strange, and
17 again, I ask you to remember this is the process that we're in.
18 It's not -- it doesn't mean anything else than that as to what
19 we're looking at.

20 Mr. Trump is right, Mr. Sterling went to the House of
21 Representatives and complained. He has the absolute right to
22 do that. He went to the House of Representatives legally,
23 legally, and he complained.

24 What happened next? He went -- reporters got
25 interested in his case. It wasn't just Mr. Risen who wrote a

1 story about a black CIA officer feeling discriminated against.
2 Mr. Sterling's story was in *People* magazine. He was on
3 television. He wasn't hiding the fact that he was in a lawsuit
4 with the CIA.

5 And no, they didn't pay him. The case got dismissed.

6 What happened next, Mr. Sterling tries to write a
7 book, and how do you do that when you work at the CIA? You
8 have to have your book cleared by a lawful -- a legal process.

9 He submitted his book; it didn't get cleared; and he
10 ended up in litigation again with the CIA, in trial litigation,
11 legal litigation.

12 So you're seeing the pattern that Mr. Trump is
13 talking about is one also of legal actions taken by Jeffrey
14 Sterling.

15 And there's also no question that Mr. Sterling in
16 2003 went to the Senate Select Intelligence Committee and
17 voiced his concerns about this program. He was legally
18 authorized to do that. There's no question about that. That's
19 not being a traitor, to go tell the Congress that you think
20 something is wrong with a program at the CIA.

21 But all these actions do leave him as an outcast at
22 the CIA. There isn't any question about that. Sterling is out
23 of the club at this point. He's, he's a whistleblower. He's
24 whatever -- he's a pain in their side. He's whatever you want
25 to call him, he's that; and everybody, almost everybody who

1 testifies against him in this case is going to be someone who's
2 still inside of this tight club.

3 So there's no disputing that Mr. Risen, we don't
4 dispute that after Mr. Sterling went to the Senate Select
5 Intelligence Committee, Mr. Risen learned of the lawful
6 disclosures that Mr. Sterling had made at the SSCI.

7 Do you know how long the phone call was that
8 Mr. Sterling made that Mr. Trump told you about in the opening
9 statement? Three seconds. It's a three-second call. That's
10 all you'll see. You'll see a bunch of phone records here.
11 So -- and a lot of them you won't see, and I'll get to that in
12 a second.

13 But so the key issue for you to decide in one respect
14 is what happened? How did this information get out of the
15 SSCI, the Senate Select Intelligence Committee, and to
16 Mr. Risen? Was it Mr. Sterling or someone else? That's the
17 question you get to decide; and I'll suggest to you here later
18 on, I'll tell you exactly how, a scenario where it could have
19 happened.

20 But what do you not see? You don't see a written
21 communication to Mr. Risen from Mr. Sterling about the program
22 at all, no evidence they even met in person. Did you hear
23 that? Did you hear in 2003 that they met in person and he gave
24 him documents or anything? No, no evidence of that.

25 Do you have any evidence that Mr. Sterling FedExed or

1 mailed something to Mr. Risen? No. They have a few traces of
2 e-mails. Risen is still interested. Mr. Sterling certainly is
3 interested in his discrimination case which goes on, so they're
4 still talking about something that they've written a public
5 story about, and there's nothing. There's nothing else at all,
6 no recorded calls.

7 And so what you have is a suspicion, a suspicion that
8 it was Mr. Sterling backed up by anger and the fact that the
9 CIA despises Mr. Sterling now to go on for 13 years and do
10 this.

11 But the evidence, which the government didn't tell
12 you about again, is that Mr. Sterling -- excuse me, Mr. Risen
13 will tell you by transcript that he had a wide range of unnamed
14 sources for his reporting. That's what Mr. Risen is going to
15 tell you. He had a wide range of sources. That was a question
16 asked by the government.

17 Folks, that's as good as it gets from Mr. Risen's
18 mouth.

19 And we didn't hear any, any testimony proffered at
20 all by the government from Mr. Risen, the evil person who
21 printed this book, not a thing. And the government can't fill
22 this void, okay? There's no way they can fill this; but all
23 they want you to do is speculate about what Mr. Risen heard or
24 what he did, without ever putting on any evidence of that at
25 all.

1 And they know from Mr. Risen's other exhibits,
2 there's a book proposal that Mr. Risen wrote in which he says
3 that he talked to multiple CIA officers about this program.

4 We don't need to put this up, Mr. Francisco.

5 I'll read this to you. You'll get this at the end of
6 the case. It's Government Exhibit 128, and in it, it says that
7 Mr. Risen writes: "CIA officers involved in the operation have
8 come to the author to discuss the case because they now feel
9 enormous guilt for a program that they believe may have aided
10 Iran's nuclear weapons program."

11 You catch all the plurals, ladies and gentlemen? But
12 who do they -- it must have all -- everybody is lying because
13 it's Sterling giving everything to Risen, and Risen writes
14 these things before there's ever even a criminal investigation
15 at all. He writes in the, in the preface of his book that
16 you'll get that the book wouldn't be possible without the
17 cooperation of many current and former officials in the
18 Intelligence Community and other parts of the government. Many
19 of them were willing to discuss sensitive matters only on a
20 condition of anonymity. That's Mr. Risen's words.

21 So what do we have to rebut that? Circumstantial
22 evidence. Sterling, it must have been Sterling; but it's just
23 an invitation to speculate; and that's not the burden that the
24 government carries here.

25 So again, I say to you, listen closely for direct

1 evidence of Mr. Sterling's supposed acts. They don't exist.
2 No such evidence exists.

3 And when you get the book, the speculation won't
4 even -- isn't even played out by reading the book. The
5 beginning of chapter 9 details an event which took place in
6 2004 which led to the death of Iranian agents.

7 Folks, Sterling wasn't at the CIA, okay? He wasn't
8 there. They can't pin this one on him. That's the first thing
9 that's in it. It's not him.

10 And then later in the book, on page 207 -- again,
11 you're going to -- we're going to go through this. It's going
12 to get mind-numbing, I'm sure, to you soon enough, but when
13 we're actually looking at the book, on page 207, there's
14 writing about an NSA program, of the NSA supposedly being
15 involved in tracking an Iranian official to see that the plans
16 are delivered. I'm not doing a good job of telling you what it
17 says, but the CIA's people are going to tell you that's
18 completely false. That never happened. Nobody ever tracked an
19 Iranian official picking up the plans in Iran and bringing --
20 picking them up in Vienna and bringing them to Iran. It's
21 completely false.

22 So what is Mr. Risen? Is he a fableist? Is
23 Mr. Sterling the source for his fables? What is, what is going
24 on? There's no way that Sterling could have told him that.
25 Apparently, it's completely untrue.

1 You'll look more into the book. Mr. Merlin, who
2 you'll hear testify by videotape, he, he's quoted -- his
3 language attributed to this Russian is in quotes in this book,
4 okay? That's on page 207. And I asked him at the deposition
5 to read it out loud, and you'll hear him speak in his Russian
6 accent exactly the words that are in this book.

7 And then the next question is, "Can you tell me how
8 it is that Mr. Risen has you quoted in this book?"

9 And he says, "No, I can't explain that at all. No
10 possible explanation for that."

11 "Are those words that you used?"

12 "Yes, those are words that I used. It's a correct
13 quote, but I never talked to him, and I don't know anybody who
14 did."

15 There's another one of those quotes as well. The --
16 Merlin tells in Risen's book in quotes, he talks
17 about delivering the weapons -- the plans for a nuclear weapon
18 and wrapping them in a newspaper and putting them on top of a
19 mailbox in Austria. There's the high-quality operation we're
20 talking about.

21 But what's more important than that? There's no
22 report that says he wrapped them in a newspaper. He doesn't
23 remember telling Mr. Sterling that he wrapped the plans for a
24 nuclear weapon in a newspaper, but what Mr. Risen has in the
25 book is accurate, so where did it come from?

1 It's not my job to prove to you where it came from,
2 but it didn't come from Jeffrey Sterling.

3 And there's all kinds of information in this book
4 that you'll see came from sources other than Mr. Sterling. It
5 couldn't have come from Mr. Sterling, and it will take apart
6 the mosaic, it will take the pieces out of the jigsaw puzzle
7 that Mr. Trump wants you to put together for them.

8 Mr. S. -- Bob, I guess we call him -- is a very
9 interesting witness in this case. He knew everything that was
10 in this book, okay, everything that's in chapter 9. He was
11 there the whole time. There isn't any debate about that, and
12 so when Mr. Trump tells you that, that this didn't happen,
13 nobody else -- Bob knew everything, okay? Bob knew everything,
14 and the CIA just takes his word that he didn't ever speak to
15 Mr. Risen.

16 We're going to get phone records in this case out the
17 gazoo, and Mr. Sterling gets the Friends and Family Plan from
18 the government. Everybody he talked to in the last ten years,
19 if he called somebody, they went and got his phone records. If
20 he stayed at somebody's house, they got his. But for Bob, they
21 don't even bother. They don't even bother. They don't have
22 Mr. Risen's phone records.

23 So how do you prove that Bob -- you're going to come
24 in in a circumstantial case and say: I'm going to prove to you
25 that Bob S. and Jim Risen never talked to each other, but I

1 never got either one of their phone records, but it must have
2 been Sterling. There's the pattern of what we have here.

3 There are some e-mails, very short traces of e-mails
4 between Sterling and Risen, but they don't add up to anything
5 at all. There's no evidence at all of Mr. S.'s e-mail traffic
6 at all, none, not a single thing.

7 And guess what? The CIA can't tell you what
8 Mr. Sterling was doing. You would think the CIA would be able
9 to track the e-mails or the printing or the comings and goings
10 of a case officer; and they say: No, sorry, we can't. We
11 can't do that for you, right? It's not there. We don't know.

12 And this is important because when you read this
13 book, you will see that Mr. Risen obviously had access to a lot
14 of documents, but when did Sterling get them? Sterling was out
15 of the program in 2000, in May of 2000, and there's no sense or
16 even suggestion of a leak between that time and 2003.

17 So what did he do, go home with a backpack full of
18 documents from the CIA that he printed up, and nobody can tell
19 you when it happened, where it happened? Did you hear a
20 witness who's going to say Jeffrey Sterling printed up a
21 letter?

22 Bob, by the way, the letter Mr. Trump told you, Bob
23 was working on that letter with Merlin as well. It wasn't just
24 Mr. Sterling. And it was Merlin, by the way, who will tell you
25 he was the last person with a copy of the letter, the

1 approximate letter that ends up in the book.

2 So there are other things about firing sets and, for
3 example, Merlin only refers to the plans as blueprints.

4 Mr. Risen refers to them as blueprints. In not a single cable
5 that Mr. Sterling drafted do you see those words.

6 But again, Mr. S., Merlin, they'll all deny being the
7 source. They've all seen what's happened to Mr. Sterling, and
8 nobody is going to admit to having anything to do with this.

9 So there's lots of possibilities to how this
10 happened, and I'm going to leave you with one other one at this
11 time. Before I do that, though, the phone records, these phone
12 calls Mr. Trump just told you about, the April -- oh, excuse
13 me, the February 2003 call was 50 seconds, I'm sorry. The next
14 calls, there were six apparent calls in 2003 that add up to
15 three minutes, three-and-a-half minutes over a three-week time
16 period. I guess the government wants you to think that all the
17 information in Risen's book came in over those as well.

18 So there is another scenario, I'll suggest to you;
19 and again, the defendant has no burden of proof in this case;
20 but listen, listen to something else that may have happened
21 that the evidence in this case will support.

22 Mr. Sterling goes up to the Senate Select
23 Intelligence Committee and tells, tells his story, as he was
24 legally entitled to do. No one's going to tell you otherwise.
25 And one of the people that he tells it to is someone named

1 Vicki Divoll, and my distinguished colleague here already gave
2 you her name. What do we know about Vicki Divoll? She's a
3 very partisan Democrat who works, been working up on the Hill
4 for a while, very experienced.

5 And what happens within about a month after, after
6 this happens? Ms. Divoll is fired from her job at the Senate
7 Select Intelligence Committee, and what do you think she was
8 fired for? She was fired because of a story about something
9 dealing with the CIA that happened in front of that committee
10 was published by Mr. Risen. That's exactly what happened.

11 I'll show you the story. It's called "Broad Domestic
12 Role Asked for CIA and the Pentagon." It details an effort by
13 the CIA in 2003 to get permission to obtain records in the
14 United States without a subpoena.

15 The leak is plainly attributed to Mrs. Divoll.
16 You'll get to hear her testify and hear her answer how it is
17 that the story got out, because what she did was tell somebody
18 else -- her story is: I told somebody else, who told somebody
19 else, and eventually, somehow Mr. Risen got ahold of it. Okay?
20 Does that sound like something that happened? It did happen.

21 And now we'll see what she has to say about it.
22 She's going to deny ever talking to Mr. Risen, either; but
23 there's no question because -- that she got fired for a story
24 that makes it to Jim Risen. And what could have happened after
25 that? Risen finds out about the story, and what story does he

1 find out about? The one that Sterling told her, right? That's
2 the consistent story. Who else told the Senate Select
3 Intelligence Committee? He did.

4 And then if you read Risen's -- what we have here is
5 evidence, Mr. Risen says he reached out to many officials and
6 other intelligence officers and other people and reached for
7 more information. Why is it that it's only Mr. Sterling that
8 the government can think of to tell you that he may have
9 called? As I say, they don't even ask for Bob's phone records
10 to see whether it was him or anybody else.

11 And, of course, in this time now was the time the
12 book is being written, there's reasons for these officials to
13 be worried. The CIA is getting all kinds of bad press for not
14 finding any weapons of mass destruction in Iraq; and what do
15 they need, another story about a Russian scientist dropping off
16 plans for a nuclear weapon wrapped in a newspaper? No, they
17 don't need that.

18 So it's equally plausible, ladies and gentlemen, that
19 Mr. Risen then went and talked to other people. I don't know
20 who. I don't have to prove it. I don't know where else it
21 came from, but if you look at the documents, you'll see he got
22 a lot of documents from a lot of people, including documents
23 that they admit Mr. Sterling never had in the first place. And
24 whoever tried to help him may not be the last person ever
25 burned by a reporter, but they didn't get the story that they

1 wanted. So you'll consider that evidence as you hear the rest
2 of these witnesses testify.

3 Mr. Sterling is also charged with mail fraud somehow
4 for selling Mr. Risen's book here in Virginia, stealing
5 property and putting it in a book. It's a silly charge for
6 which there's no basis. In fact, the, the sale of the book in
7 Virginia is probably the only thing that, the evidence you'll
8 ever hear of anything that happened; and you can consider that
9 as to why that was raised.

10 He's charged with obstruction of justice apparently
11 because an e-mail was deleted on his computer at some point in
12 time, and you'll see the government has no evidence that that
13 was done in any way to hinder or delay or any kind of an
14 investigation.

15 And again, I want to thank you-all for your service,
16 valuable service as jurors in this case. It's going to be a
17 slog looking through all these details; but I hope I gave you a
18 good outline of the defendant's case; and again, we will ask
19 you to give Mr. Sterling his life back at the end of this case.
20 Thank you very much.

21 THE COURT: All right, ladies and gentlemen, we're
22 going to take about a five- -- only a five-minute break, so
23 I'll ask you to stay in the jury room. We have to set up the
24 courtroom for the special witnesses who are going to be
25 beginning. Five-minute recess.

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1 (Recess from 2:56 p.m., until 3:08 p.m.)

2 (Defendant and Jury present.)

3 THE COURT: All right, call your first witness.

4 MR. OLSHAN: Thank you, Your Honor. The government
5 calls Stephen B.

6 THE COURT: All right, Mr. B.

7 STEPHEN B., GOVERNMENT'S WITNESS, AFFIRMED

8 MR. OLSHAN: May I proceed, Your Honor?

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. OLSHAN:

12 Q. Good afternoon, sir.

13 A. Good afternoon.

14 Q. If you could, please state your first name, spell your
15 first name, and state your last initial.

16 A. Stephen B., S-t-e-p-h-e-n.

17 Q. Mr. B., have you ever been employed by the Central
18 Intelligence Agency, or the CIA?

19 A. Yes.

20 Q. Is the CIA part of the United States government?

21 A. Yes.

22 Q. If you could explain in your own words very briefly, what
23 does, what does the CIA do?

24 A. The CIA collects foreign intelligence and foreign
25 counterintelligence information and provides that information

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1 to U.S. policymakers.

2 Q. Were you employed by the CIA during the 1990s?

3 A. Yes.

4 Q. Let me focus your attention on the years 1994 and 1995.

5 Were you employed by the CIA during that time?

6 A. Yes, I was.

7 Q. What was your position with the CIA during that period?

8 A. I was a case officer.

9 Q. Can you explain to the jury what a, what a case officer
10 does?

11 A. Sure. A case officer, or an operations officer, as it's
12 also known, is someone who spots, assesses, recruits, and
13 handles foreign human assets.

14 Q. And when you say "spots," is that the same thing as
15 recruiting?

16 A. Well, recruiting is different than spotting. Spotting is,
17 is sorting through people, leads, to find the right people with
18 access to information that we're looking for.

19 Q. When you find the right people to access the information
20 you're looking for, would you have a role recruiting those
21 individuals as a case officer?

22 A. Yes.

23 Q. While you were a case officer, did you hold a security
24 clearance?

25 A. I did.

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1 Q. And at what level?

2 A. Top Secret/SCI.

3 Q. And do you know what "SCI" stands for?

4 A. Special Compartmented Information.

5 Q. Is there a level below Top Secret?

6 A. Yes, Secret.

7 Q. Mr. B., does everyone -- during your time at the CIA, does
8 everyone have or did everybody have, who had a TS or a Top
9 Secret security clearance, have access to all of the Top Secret
10 information at the CIA?

11 A. No.

12 Q. Was it broken down as to who could access specific types
13 of Top Secret information?

14 A. Yes. It's compartmented, so not everyone can see
15 everything that everyone else is working on.

16 Q. Are you familiar with the concept of a need to know?

17 A. Yes, I am.

18 Q. And is that something that's a principle used or employed
19 in the CIA?

20 A. Absolutely.

21 Q. Can you tell the jury what the need-to-know principle is?

22 A. So you have a clearance, a Secret, Top Secret, and then
23 you also have need to know based on the work that you're doing.
24 So just because you have a Top Secret clearance doesn't mean
25 that you're going to be able to see details of other cases or

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1 other operations going on. Only if you have the need to know
2 also and the clearance can you -- will you might be allowed to
3 have access to that information.

4 Q. During your time as a CIA employee, did you receive
5 training concerning the handling of classified information?

6 A. Yes.

7 Q. Was it important at the CIA to properly handle classified
8 information?

9 A. Very much so.

10 Q. You mentioned the term "human asset" when you were
11 describing what a case officer does. Do you recall that?

12 A. Yes.

13 Q. Can you tell the jury what a human asset is in the CIA
14 lingo?

15 A. It's a source, a person who has access to information of
16 interest to the agency, to the CIA. That would be a human
17 asset. And then a person who we recruit, who agrees to work
18 for the agency and share that information with us.

19 Q. Are you familiar with a human asset whom I will refer to
20 as Merlin?

21 A. Yes.

22 Q. Was Merlin this person's true name, or was it something
23 different?

24 A. It was something different.

25 Q. Approximately when did you meet Merlin?

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1 A. In approximately 1994.

2 Q. And do you recall what nationality Merlin was?

3 A. Yes. He was Russian.

4 Q. Did he come from a specific professional background?

5 A. Yes. He was an engineer that worked for a facility called
6 Arzamas-16.

7 Q. Is that a facility in Russia?

8 A. It is.

9 Q. What was the purpose of that facility?

10 A. My understanding was it's, part of the responsibilities of
11 that facility was to assemble and disassemble tactical and
12 nuclear weapons.

13 Q. Did Merlin have a role in the assembly, for example, of
14 weapons?

15 A. He worked in a facility that had that responsibility, yes.

16 Q. Assembly?

17 A. Correct.

18 Q. And at some point, did Mr. Merlin immigrate to the United
19 States?

20 A. He did.

21 Q. With his family?

22 A. Yes.

23 Q. Was Mr. Merlin a defector to the United States?

24 A. No, not a defector.

25 Q. Did you have any involvement in recruiting Merlin to work

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1 for the CIA?

2 A. I did.

3 Q. Were you the first person to approach and attempt to
4 recruit Mr. Merlin on behalf of the CIA?

5 A. Yes.

6 Q. Was he interested when you first approached him?

7 A. No, he was not. He expressed concern through his wife
8 that he didn't want to speak with anyone from the Intelligence
9 Community, we felt -- my assessment was because in Russia, any
10 dealings with the KGB would have been much different than the
11 way we would treat assets here in the U.S. and as part of the
12 Central Intelligence Agency.

13 Q. And just for the jury's benefit, what is the KGB briefly?

14 A. Russian security service, intel service at the time.

15 Q. You say intel. That's intelligence service?

16 A. Intelligence service, yes.

17 Q. You testified that at first, Mr. Merlin was not interested
18 in working with the CIA; is that correct?

19 A. Yes.

20 Q. At some point, did he become interested?

21 A. Yes.

22 Q. And how were you able to persuade him to work with the
23 CIA?

24 A. Initially, we met with his wife, who was also an émigré
25 and identified as a lead by CIA headquarters to our office, and

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1 we went out and interviewed her a few times. She was the one
2 who actually said, "The person that you should talk to is my
3 husband, because he, he did more interesting things at Arzamas
4 than I did."

5 Q. And so was she instrumental in persuading him to work with
6 you in the CIA?

7 A. Yes, I believe so.

8 Q. Did you provide any other incentive to Mr. Merlin to work
9 with the CIA at the time?

10 A. Yes. We offered him payment for his time.

11 Q. Is it -- was that standard practice when recruiting human
12 assets?

13 A. Absolutely.

14 Q. After Mr. Merlin agreed to work with the CIA, what
15 happened next? What did you, what did you do once he agreed
16 to, to work with you?

17 A. We set up a series of debriefings with members of the
18 Department of Energy and CIA analysts who helped in the
19 technical debriefings of Mr. Merlin.

20 Q. So you mentioned the word "debriefings." What's the
21 purpose of those debriefings?

22 A. To collect intelligence, to collect details on what was
23 happening within Arzamas-16.

24 Q. So it was to gather historical information or intelligence
25 that Mr. Merlin possessed; is that accurate?

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1 A. Yes.

2 Q. Did you attend these debriefings?

3 A. I did.

4 Q. Did Mr. Merlin speak good English?

5 A. No. We, we had to use a, a translator, an agency
6 translator to help with those debriefings.

7 Q. Do you recall what name, first name the agency translator
8 went by when dealing with Mr. Merlin?

9 A. I believe it was Ivan.

10 Q. You testified your first name is Stephen. Did Mr. Merlin
11 know you by the name Stephen or something else?

12 A. No, he knew me by another name, which was my agency alias.

13 Q. What was the first name of that agency alias?

14 A. Scott.

15 Q. When you would meet with Mr. Merlin for these debriefings,
16 would you meet at a CIA facility or somewhere else?

17 A. Somewhere else.

18 Q. Why not meet at a CIA facility with Mr. Merlin?

19 A. Because we always incorporate pieces of operational
20 security. We're always concerned about counterintelligence,
21 what other people might be trying to find out about our
22 operations. So if we were to bring him to a known agency
23 location, that might not be -- it just doesn't work well with
24 the operational security, what we try to build into our, our
25 cases.

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1 Q. Was there a risk involved if you were to bring Mr. Merlin
2 to a specific CIA, known CIA location?

3 A. There could be a risk because someone who we don't want
4 might be watching a known CIA facility, the Russians, for
5 example.

6 Q. Did you tell the Russians that you were debriefing
7 Mr. Merlin?

8 A. No, sir.

9 Q. Was it important or unimportant for the Russians to know
10 whether Mr. Merlin was working with the CIA?

11 A. Well, my presumption would be that they would prefer that
12 he was not talking to the CIA.

13 Q. How important was it from your perspective, from the CIA's
14 perspective, to ensure that the Russians not know that he was
15 working --

16 MR. POLLACK: Objection.

17 THE WITNESS: A very high priority.

18 THE COURT: Wait, there's an objection.

19 MR. POLLACK: I'm going to object. Mr. B. has to
20 speak for himself. He can't speak for the agency.

21 THE COURT: I'll sustain the objection.

22 MR. OLSHAN: That's fine.

23 Q. From your personal perspective, how important was it for
24 the Russians not to know that Mr. Merlin was meeting with the
25 CIA?

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1 A. I would judge it as very important.

2 Q. Does it pose any risk from an intelligence standpoint if,
3 if the Russians were to find out that you had been debriefing
4 Mr. Merlin?

5 A. My assessment would be that yes, that would not be
6 something we would want in our operation.

7 Q. Could it affect the intelligence value of his debriefings?

8 A. It certainly could.

9 Q. You testified that there were other people present during
10 these debriefings in addition to you and the translator, Ivan.
11 Is that correct?

12 A. Yes.

13 Q. Do you have a technical background, Mr. B.?

14 A. I do not.

15 Q. Were there individuals involved in the debriefings who,
16 who did?

17 A. Yes.

18 Q. And were any of those individuals from National
19 Laboratories in the United States?

20 A. They were.

21 Q. And those individuals, did they have specific technical
22 backgrounds?

23 A. Yes.

24 Q. Was the information obtained from Mr. Merlin during these
25 technical debriefings, was it evaluated by the CIA?

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1 A. It was.

2 Q. And were you ever made aware of the assessment of the
3 value of the information provided by Mr. Merlin?

4 A. Yes, I was.

5 Q. What was reported to you about the value of his
6 intelligence?

7 MR. POLLACK: I'm going to object. Hearsay and
8 relevance.

9 THE COURT: Well, is it being offered for the truth
10 of its contents, or what is the purpose for asking this
11 question?

12 MR. OLSHAN: It's not being offered for the truth.
13 It's what was reported to this individual, but it also goes to
14 the closely held nature of this particular asset, his
15 importance to the CIA.

16 THE COURT: I'll sustain -- I'll overrule the
17 objection then.

18 BY MR. OLSHAN:

19 Q. My question, Mr. B., was were you ever made aware of the
20 evaluation of the intelligence that Mr. Merlin provided to the
21 U.S. government?

22 A. Yes.

23 Q. And what was the evaluation of that information?

24 A. Some of the reporting was rated as outstanding.

25 Q. And was that on a scale?

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1 A. It is on a scale of which outstanding, an outstanding
2 rating is the highest rating that can be given to a piece of
3 intelligence.

4 Q. During the time that you worked with Merlin -- strike
5 that.

6 Approximately how long did you work with Merlin?

7 A. Approximately one year.

8 Q. So that would be from sometime in 1994 to sometime in
9 1995?

10 A. Yes.

11 Q. During the time that you worked with Mr. Merlin, would you
12 characterize him as an easy asset to handle or a hard asset to
13 handle?

14 A. Fairly easy.

15 Q. Is that fairly or very?

16 A. I said fairly, but he was not a problem to handle.

17 Q. Can you describe briefly the information that was gathered
18 related to this human asset Merlin? Was it subject to any
19 access restrictions as far as who could review it?

20 A. Yes. So the information was compartmented. It was held
21 in, in close channels, and so yes, to answer your question.

22 Q. Could individuals at the CIA who were not read into this
23 specific program or file for Merlin access any documents
24 related to Mr. Merlin?

25 A. No.

Stephen B. - Direct

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1 Q. Did you maintain a file in your particular office?

2 A. We had, we had what we call a soft file in the office,
3 yes.

4 Q. How was that soft file maintained?

5 A. In the safe in our, in our office.

6 Q. Was there also an electronic file?

7 A. There is.

8 Q. And were there restrictions as to who could access that --

9 A. Yes.

10 Q. -- electronic file?

11 A. Yes.

12 Q. And similarly, was that restricted to people who had been
13 granted access to information related to Mr. Merlin?

14 A. Yes, people who had the need to know about this case.

15 Q. You testified that in approximately 1995, you stopped
16 being the case officer for Mr. Merlin. Is that right?

17 A. Yes.

18 Q. Did you transfer Mr. Merlin to a different case officer?

19 A. I did.

20 Q. And what was the first name and last initial of that case
21 officer?

22 A. That case officer was Laurie D.

23 Q. Was it routine for one case officer to hand -- to transfer
24 an asset to another one at some period of time?

25 A. Yes. Typically, when you are leaving that office to go to

Stephen B. - Direct

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1 a new office, you will hand over assets to another officer.

2 Q. Is that what happened with you?

3 A. Yes.

4 Q. You went to a different office?

5 A. Yes.

6 Q. Now, Ms. D., Ms. Laurie D., was she in your chain of
7 command when you transferred Merlin to her as the new case
8 officer?

9 A. She was.

10 Q. Where was she in your chain of command?

11 A. She was my immediate supervisor.

12 Q. After you stopped being Merlin's case officer, did you
13 retain any access to either that soft file you mentioned or the
14 electronic file related to Merlin?

15 A. No, sir.

16 Q. Could you have accessed that if you wanted to?

17 A. No.

18 Q. During your time as Merlin's case officer, was he ever
19 used for anything other than historical debriefings?

20 A. No.

21 Q. Was he used operationally?

22 A. No.

23 Q. Do you have any personal knowledge as to whether he was
24 ever used in any CIA operations?

25 A. I do not.

Stephen B. - Direct

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1 Q. Did you ever hear anything else about Mr. Merlin from
2 Laurie D., for example?

3 A. Just in casual conversation on, you know, how things were
4 going between, you know -- she would say, she said -- go ahead.

5 MR. POLLACK: Objection.

6 THE COURT: Wait, wait.

7 MR. POLLACK: Objection, Your Honor. This is hearsay
8 and at times I understand that Mr. B. is not even involved
9 anymore.

10 THE COURT: Well, I think the question is relevant to
11 this case because it addresses the degree to which there is
12 ongoing contact about a human asset after a person leaves the
13 program. To that extent, I'm permitting it, but in terms of
14 the truth of the contents or what actually was said, that's not
15 terribly important.

16 MR. OLSHAN: Okay.

17 MR. POLLACK: My understanding is he's about to relay
18 a conversation he had with Laurie D., not a conversation he had
19 with Merlin.

20 THE COURT: No, no, I understand that.

21 MR. POLLACK: Okay.

22 MR. OLSHAN: I'll rephrase the question.

23 THE COURT: Rephrase the question.

24 BY MR. OLSHAN:

25 Q. Mr. B., did you have any discussions with Laurie D. about

Stephen B. - Direct

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1 any classified aspects of Mr. Merlin --

2 A. No.

3 Q. -- by the CIA?

4 A. No.

5 Q. So any remarks were casual, generic? How would you
6 describe it?

7 A. Yes. It was just casual conversation after I had left the
8 office, just saying, you know, "How are things going?"

9 "Doing well."

10 Those sorts of things, but nothing, nothing on a
11 classified level, no.

12 Q. Let me ask you a question: Relative to your entire CIA
13 career, Mr. B., how would you in your personal experience rank
14 the intelligence value of Mr. Merlin compared to other assets
15 that you dealt with?

16 THE COURT: He can testify to that. Objection
17 overruled.

18 THE WITNESS: Based on my career, the intelligence
19 that was produced by Merlin, my judgment was that it was one of
20 the most prolific in terms of intelligence that I had handled.

21 BY MR. OLSHAN:

22 Q. Do you know the defendant in this case, Mr. B., Jeffrey
23 Sterling?

24 A. I do not.

25 Q. Have you ever seen this man before?

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1 A. Not to my knowledge, no.

2 Q. Do you know an individual named James Risen?

3 A. I do not.

4 Q. Have you ever read the book *State of War* by James Risen?

5 A. I did read the book.

6 Q. Did you -- and when, when did that happen?

7 A. After Special Agent Hunt interviewed me on this case and
8 asked me if I had read the book, I said no. She showed me the
9 book, some of the pages under one of the chapters was
10 highlighted, asked me to read it.

11 After that interview, I went out and purchased the
12 book out of curiosity and read the book.

13 Q. Approximately when was that?

14 A. It had to be in 2006.

15 Q. Subsequent to purchasing the book, did you ever meet
16 Mr. Risen?

17 A. No.

18 Q. Have you ever spoken to him about your dealings with
19 Merlin?

20 A. No.

21 Q. Did you ever discuss Merlin or his role with the CIA with
22 anyone whom you believed did not have access or the need to
23 know about Merlin?

24 A. No.

25 MR. OLSHAN: One moment, Your Honor?

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1 THE COURT: Yes, sir.

2 MR. OLSHAN: I'll pass the witness at this time, Your
3 Honor.

4 THE COURT: All right. Mr. Pollack?

5 MR. POLLACK: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. POLLACK:

8 Q. Good afternoon, Mr. B. My name is Barry Pollack, and I'm
9 one of the attorneys that represents Mr. Sterling.

10 As I understand it, Mr. B., your role with respect to
11 Merlin was first in recruiting him, correct?

12 A. Yes.

13 Q. And then secondly in debriefing him because he had
14 information about the Russian nuclear program that might be of
15 value to the United States, correct?

16 A. Yes.

17 Q. And at that time during your involvement from '94 to '95,
18 Merlin was not an operational asset, correct?

19 A. That is correct.

20 Q. You were merely debriefing him to get information from him
21 from his prior career, correct?

22 A. That is correct.

23 Q. And so when you said that he was a very easy asset to
24 handle, that was in the context of he was a very easy person to
25 debrief, correct?

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1 A. Yes.

2 Q. And, in fact, you got voluminous information from him,
3 correct?

4 A. That is correct.

5 Q. And just to be clear, the time that you were interacting
6 with Merlin, Mr. Sterling was not part of that relationship at
7 all, correct?

8 A. That's correct.

9 Q. And when you first wanted to -- well, you first heard
10 about Merlin and his potential value from Merlin's wife,
11 correct?

12 A. Well, the first was a lead from CIA headquarters that
13 identified both Merlin and his wife as new émigrés to the
14 United States, both of interest, potential interest to the
15 Intelligence Community. So that was the first I had heard
16 about it, but I also heard from Mrs. Merlin that her husband
17 would be someone that we should talk to.

18 Q. And so that made you more interested in Mr. Merlin, right?

19 A. Yes.

20 Q. And you said that the CIA recruits assets or treats assets
21 a little bit differently than the KGB did in, in Soviet Union?

22 A. Yes.

23 Q. In fact, the way that you went about trying to recruit
24 Merlin is you asked the wife, Mrs. Merlin, to stress for
25 Mr. Merlin just how much money he could make working for the

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1 CIA, correct?

2 A. That was part of the recruitment pitch, yes.

3 Q. And, in fact, when you met Mr. Merlin after he had
4 initially refused to talk to government officials, you actually
5 showed Mr. Merlin a suitcase full of \$50,000 worth of cash to
6 try to entice him; is that correct?

7 A. I did.

8 Q. And ultimately, the money was enticing to Mr. Merlin, was
9 it not?

10 A. I would think so, yes.

11 Q. And, in fact, ultimately, he agreed to cooperate with the
12 United States government and work for them, correct?

13 A. He did.

14 Q. But before doing that, before accepting the deal, he
15 actually tried to negotiate more money, did he not?

16 A. No, he tried to negotiate less money for less time. We
17 had asked him to work for us for at least two years in exchange
18 for a set amount of money. He came back to me and said, "I'd
19 like to work for one year," and so I told him that that was not
20 the deal that was on the table.

21 Q. Okay. So he wanted to work for one year for \$150,000, and
22 you wanted him to work for two years for \$300,000, correct?

23 A. It was -- I don't recall the exact numbers, but that was
24 basically the deal.

25 MR. POLLACK: Your Honor, may I hand the witness a

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1 document to see if it refreshes his recollection?

2 THE COURT: You hand it to Mr. Wood.

3 MR. POLLACK: Thank you.

4 THE COURT: That's all right. Let's just move this
5 along. It's all right.

6 BY MR. POLLACK:

7 Q. The question, Mr. B., is does that refresh your
8 recollection as to whether the amount that you were going to
9 pay to Mr. Merlin for his two years of debriefing was \$300,000?

10 A. It doesn't refresh my recollection because it was 20 years
11 ago, but I presume if that's what I said back then, those
12 numbers are correct.

13 Q. And after about a year or so --

14 MR. OLSHAN: Your Honor?

15 THE COURT: Is there an objection?

16 MR. OLSHAN: I apologize, I may have missed it. Has
17 it been noted for the record what it is that the witness is
18 looking at?

19 THE COURT: No, it was not.

20 MR. POLLACK: Your Honor, for the record, I was
21 showing the witness an FBI 302 form from an interview of Mr. B.
22 that was conducted by the FBI. It's dated April 7, 2006.

23 THE COURT: All right, that's what it is.

24 And you'll hear the terminology "302." That's just
25 what the FBI calls its reports of investigation, and I think

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1 you'll hear a lot of references to FBI 302s.

2 We can return that document to counsel.

3 Go ahead, Mr. Pollack.

4 MR. POLLACK: Thank you, Your Honor.

5 Q. And then after approximately a year, you ended your
6 relationship with Merlin, correct?

7 A. Yes.

8 Q. And you turned that relationship over to another case
9 officer by the name of Laurie D.?

10 A. Yes.

11 Q. And before you, you did so, you turned over your paper
12 file pertaining to Merlin to Laurie D., correct?

13 A. Yes.

14 Q. And at that point, your access to the FBI's relationship
15 with Merlin was cut off? Let me rephrase it: Specifically at
16 that point, you no longer had the ability to access documents
17 pertaining to the CIA's relationship with Merlin?

18 A. CIA, correct.

19 Q. And that, that is typical that once you're no longer
20 involved, you no longer have a need to know, and so therefore,
21 you can't access even electronically the documentation
22 pertaining to a particular project, correct?

23 A. Yes.

24 MR. POLLACK: Thank you. I don't have anything
25 further.

1 THE WITNESS: Thank you.

2 THE COURT: All right, any questions? Any redirect?

3 MR. OLSHAN: No redirect.

4 THE COURT: All right, there should be another
5 witness in there ready for us.

6 Thank you, Mr. B. You go with Mr. Wood.

7 THE WITNESS: Thank you.

8 THE COURT: He'll escort you out.

9 MR. OLSHAN: Your Honor, is the witness fully
10 released at this point?

11 THE COURT: Wait one second. Is anybody planning to
12 call this witness again in the course of the trial?

13 MR. OLSHAN: The government is not.

14 MR. POLLACK: No, Your Honor.

15 THE COURT: All right, then you are released, and
16 that means you may now leave the courthouse.

17 THE WITNESS: Thank you.

18 THE COURT: Thank you for your testimony.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 THE COURT: And just so we can keep the case moving
22 efficiently, are the next two or three witnesses about the same
23 length?

24 MR. OLSHAN: The next one is, and then the third one
25 will get a little longer, and after that, it will get

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1 potentially significantly longer.

2 THE COURT: All right, but I want to make sure we
3 have enough witnesses here today that we can keep this going.

4 All right, we'll have the affirmation administered.

5 LAURIE D., GOVERNMENT'S WITNESS, AFFIRMED

6 THE COURT: Tomorrow please have those on sturdier
7 paper.

8 MR. OLSHAN: We will for tomorrow, Your Honor.

9 THE COURT: Okay.

10 DIRECT EXAMINATION

11 BY MR. OLSHAN:

12 Q. Good afternoon, ma'am.

13 A. Good afternoon.

14 Q. If you could just lean in a little bit?

15 A. Sure.

16 Q. Ma'am, if you would state and spell your first name and
17 your last initial?

18 A. Okay. My first name is L-a-u-r-i-e. My last initial is
19 D.

20 THE COURT: Ms. D., you're going to have to keep your
21 voice up.

22 THE WITNESS: Okay. I'll talk louder. I can
23 project.

24 THE COURT: That's perfect.

25 BY MR. OLSHAN:

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1 Q. Ma'am, let me direct your attention to the 1990s. Were
2 you employed by the Central Intelligence Agency during that
3 time?

4 A. Yes.

5 Q. And at some point during your employment with the CIA, did
6 you meet an individual whom I will call Merlin?

7 A. Yes.

8 Q. Was that in the course of your work at the CIA?

9 A. Yes.

10 Q. And can you recall approximately when did you meet Merlin?

11 A. In the 1995-1996 time frame.

12 Q. Ma'am, are you familiar with the term "case officer"?

13 A. Yes, I am.

14 Q. Were you Merlin's case officer?

15 A. For a part of the time, yes.

16 Q. Was there a period of time when you knew Merlin where you
17 were not his case officer?

18 A. Yes.

19 Q. Can you describe for the jury what your role was with
20 respect to Merlin before you became his case officer?

21 A. I was the manager of an office, and so Steve B., whom you
22 just met, used to work for me, so I saw the information that he
23 collected from Merlin and helped edit and release the
24 information that, share it back to Washington.

25 Q. Were you Mr. B.'s supervisor?

Laurie D. - Direct

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1 A. Yes, I was.

2 Q. In that role, were you permitted access to classified
3 information related to Mr. Merlin?

4 A. Yes.

5 Q. During the time that you were at the CIA, were you trained
6 in the handling or the proper handling of classified
7 information?

8 A. Yes.

9 Q. Was that an important aspect of your job at the CIA?

10 A. Yes.

11 Q. Did you have a security clearance at the time?

12 A. Yes, I did.

13 Q. And what was that security clearance?

14 A. Top Secret/HCS -- or SCI.

15 Q. Approximately how long were you supervising Mr. B., his
16 handling of Merlin, before you became Merlin's case officer?

17 A. Approximately 18 months to two years.

18 Q. Is that the total amount of time that you dealt with
19 Merlin, or that's the amount of time that --

20 A. That I supervised Steve B. I don't remember the exact
21 dates, but --

22 Q. You testified a minute ago that one of your roles as a
23 supervisor to Mr. B. was to edit correspondence or
24 communications; is that correct?

25 A. Yes.

Laurie D. - Direct

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1 Q. What types of communications, if you could describe those?

2 A. Normally reporting information that he might have gotten
3 from Mr. Merlin into intelligence reports.

4 Q. Where would those reports go?

5 A. To Washington.

6 Q. When you say Washington, where --

7 A. CIA headquarters.

8 Q. Was it standard practice for the supervisor to have a role
9 in editing the work product, so to speak, before it went back
10 to Washington?

11 A. Yes.

12 Q. At some point, you testified you became the case officer
13 for Merlin?

14 A. Yes, I did.

15 Q. And if you could estimate, approximately how long were you
16 in that role?

17 A. Probably about 18 months or so.

18 Q. Were you involved in any of the debriefings of Merlin?

19 A. Yes, I was.

20 Q. Were you physically present for those, or did you just
21 edit the reports after the debriefings?

22 A. When I was the case officer, I was at the briefings --
23 debriefings.

24 Q. Ms. D., the reports that were provided back to
25 headquarters, did you ever receive a response as to the, the

Laurie D. - Direct

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1 intelligence value of what Mr. Merlin was providing to the CIA?

2 A. Yes. Traditionally, the CIA, if someone writes a report,
3 you would get feedback on what it is that you provided that
4 would help you either tell you whether or not it's worth your
5 while to continue pursuing a certain line of, you know,
6 debriefing or what impact that might have had or then follow-up
7 questions.

8 Q. So how important is it to have an accurate idea of the
9 usefulness of somebody's intelligence?

10 A. It's very important.

11 Q. And why is that?

12 A. One, it helps you as the case officer to be able to know,
13 to how you, how you should be debriefing someone and the
14 direction of the case, where you need to go next in terms of
15 collecting information.

16 Q. And to the extent you recall, what was the, the quality of
17 the reviews that came back for Mr. Merlin's intelligence?

18 A. It had, it had very high impact. It had very well
19 received by the policymakers, U.S. policymakers and the
20 analysts in headquarters, in CIA headquarters.

21 Q. Ms. D., did you ever receive any award in connection with
22 the debriefings of Mr. Merlin?

23 A. Yes, I did.

24 Q. During the time when you were Mr. Merlin's case officer,
25 did you take any specific precautions to ensure that his role

Laurie D. - Direct

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1 working with the CIA remained hidden?

2 A. Yes.

3 Q. And just generally, what types of precautions would you
4 take?

5 A. Do you mean in terms of writing things up, or do you mean
6 in terms of, like, doing, making sure that I varied my route, I
7 mean, that type -- I'm not quite sure what you mean.

8 Q. I'll rephrase that. So rather than the way that you wrote
9 things up, in dealing with Merlin, for example, would you meet
10 him at a known CIA facility?

11 A. No, no. We would, we would get hotels and would meet in
12 hotels.

13 Q. Why would you do it at a hotel as opposed to a secure CIA
14 facility?

15 A. Basically, because the, Mr. Merlin should have never gone
16 into a secure facility like that. It's just too risky that in
17 the event it's a -- it's not -- for his security, it's not good
18 to go into one of those facilities in the event that somebody
19 ever finds out where it is.

20 Q. So --

21 A. So we went to hotels instead.

22 Q. And that was so that people who might be paying attention
23 wouldn't know he was working with the CIA?

24 A. Exactly. Yeah, it's for his own security.

25 Q. Do you recall what country Mr. Merlin was from?

Laurie D. - Direct

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1 A. Yes. He was -- yes.

2 Q. Was that Russia?

3 A. Yeah, Russia.

4 Q. Do you recall whether you had any specific concerns about
5 the Russians finding out that Mr. Merlin was working with the
6 CIA?

7 A. Other than his family members?

8 Q. I'll rephrase the question.

9 A. Okay.

10 Q. Did you have any concerns about the Russian government
11 finding out about Merlin working with the CIA?

12 A. Yes.

13 Q. Describe those concerns.

14 A. As in any of these cases when you're dealing with someone
15 from another country, you don't want their country to find out
16 that they're cooperating with the U.S. government because it
17 would jeopardize their safety and security and potentially
18 their family's as well back in their home country or even in
19 the U.S.

20 Q. You testified that for some portion of the time when you
21 were the case officer for Merlin, debriefings were still going
22 on; is that correct?

23 A. Yes.

24 Q. At some point during your time as his case officer, was
25 there any discussion of using Merlin in a more operational

Laurie D. - Direct

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1 sense?

2 A. Yes.

3 Q. And were you involved in preliminary discussions about
4 that?

5 A. Yes, I was.

6 Q. What type of operation -- not what type of operation.
7 What were the basic contours of this planned operation?

8 A. We were going to -- I'm trying not to use lingo here. We
9 were going to ask Mr. Merlin if he'd be willing to get in
10 contact with another country.

11 Q. Was that Iran?

12 A. Iran, yes.

13 Q. For what purpose?

14 A. To learn more about their nuclear program.

15 Q. Do you remember whether there was any discussion while you
16 were the case officer for Merlin as to what Mr. Merlin would
17 offer or communicate to the Iranians about?

18 A. Yeah. He would pose as a disgruntled Russian nuclear
19 scientist who basically wanted to offer his services to the
20 Iranian government and help them with their program.

21 Q. Help them with their nuclear program?

22 A. Um-hum.

23 Q. And in connection with this planned operation, was there
24 an idea as to what he would offer, what type of intelligence?

25 A. He would offer his expertise and also some documents.

Laurie D. - Direct

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1 Q. Were those plans or schematics?

2 A. Yeah -- yes.

3 Q. Can you recall what the plans or schematics were for?

4 A. Not specifically, no.

5 Q. Do you recall whether it had to do with a specific nuclear
6 component?

7 A. No, I don't remember.

8 Q. Do you recall whether there was any discussion while you
9 were Mr. Merlin's case officer about whether these schematics
10 or plans would have any flaws in them?

11 A. Yes.

12 Q. And what type of flaws?

13 A. I don't remember the exact details, and I'm not a
14 technical person, but there was something in those plans that
15 would not enable the Iranians actually to be able to make
16 whatever that piece was work.

17 Q. Were these flaws apparent, or were they to be hidden?

18 A. To be hidden.

19 Q. Now, was Merlin involved in the plan to use, in the idea
20 to embed flaws --

21 A. No.

22 Q. -- or was he kept out of that?

23 A. He was kept out of that.

24 Q. And can you describe for the jury why Merlin was kept in
25 the dark about whether there would be flaws in these plans?

Laurie D. - Direct

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1 A. It was for his own security. The less that he would know
2 about that, he could have plausible deniability. If he were
3 ever asked, he wouldn't have to lie because he really didn't
4 know. So it was for his, for his own security so that he --
5 there was no -- there would be no chance of him mistakenly
6 providing information that he shouldn't have because he
7 wouldn't, he wouldn't know.

8 And for the operation itself, the security of the
9 operation itself.

10 Q. For the security of the operation, it was important that
11 he not know --

12 A. Yes.

13 Q. -- some of the details?

14 A. Um-hum.

15 Q. Why is that?

16 A. Same thing. Just to minimize the amount of information
17 that mistakenly could be given to the Iranians and to help keep
18 it secure and keep Merlin secure.

19 Q. Was it standard operating procedure for human assets not
20 to be told all the details of the operations that they would be
21 used in?

22 A. Generally speaking, yes.

23 Q. You testified that this idea was in the planning stage
24 when you were the case officer for Mr. Merlin?

25 A. Yes.

Laurie D. - Direct

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1 Q. All right. At some point, did you transition out of that
2 role and hand off Merlin to another case officer?

3 A. Yes, I did.

4 Q. And do you recall the first name and last initial of the
5 next case officer?

6 A. Zach W.

7 Q. Did Merlin know you by the name Laurie D. or by something
8 else?

9 A. He knew my first name.

10 Q. Laurie?

11 A. Um-hum.

12 Q. Ms. D., after your involvement with Merlin ended, did you
13 have any further access to the classified case associated with
14 Mr. Merlin?

15 A. No.

16 Q. If you'd wanted to, could you have gone and pulled out any
17 documents related to Mr. Merlin?

18 A. No.

19 Q. Is that -- when I say that, I'm asking is that true of
20 physical documents?

21 A. It's true physical or, or things on the computer. I
22 didn't have access to it.

23 Q. So after you were no longer the case officer, you had no
24 access to either electronic or physical?

25 A. No, I did not.

Laurie D. - Direct

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1 Q. Relative to your entire CIA career, Ms. D., how would you
2 rank the intelligence value of Merlin compared to other assets
3 you dealt with?

4 A. In my entire career, this is probably the most important
5 one that I've ever worked on, and I've worked on a lot of
6 interesting things, but this is the most important.

7 Q. Ms. D., do you know Jeffrey Sterling?

8 A. No, I don't.

9 Q. The defendant in this case?

10 A. No, I don't.

11 Q. Before entering the courtroom today, have you ever seen
12 him before?

13 A. No, I have not.

14 Q. Do you know a reporter named James Risen?

15 A. No, I don't.

16 Q. Have you ever discussed your dealings with Merlin with
17 James Risen?

18 A. No, I did not.

19 Q. Have you ever read a book called *State of War*?

20 A. I only saw the one piece of a chapter related to Merlin
21 when I was interviewed with the FBI. Otherwise, I have not
22 read the book.

23 Q. So did you ever discuss with Mr. Risen, the author of that
24 book and that chapter, anything to do --

25 A. No.

Laurie D. - Cross

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1 Q. -- with your time dealing with Merlin?

2 A. No.

3 Q. Have you ever had discussions with anyone about Merlin
4 where that person was not authorized to know about Merlin?

5 A. No.

6 MR. OLSHAN: One moment, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. OLSHAN:

9 Q. Ms. D., are you still employed by the CIA?

10 A. Yes, I am.

11 Q. And do you still work on intelligence matters?

12 A. Yes, I do.

13 MR. OLSHAN: That's all, Your Honor.

14 THE COURT: All right. Mr. Pollack?

15 MR. POLLACK: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. POLLACK:

18 Q. Ms. D., if I understand it correctly, originally at the
19 beginning of your tenure as the case officer for Merlin, the
20 relationship with Merlin was still one of simply debriefing
21 him? He was not yet an operational asset?

22 A. Yes.

23 Q. And then at some point during your tenure, there was an
24 operation that it was decided Merlin would be well suited to
25 participate in, correct?

Laurie D. - Cross

211

1 A. Yes.

2 Q. And there was an individual by the name of Robert or Bob
3 whose last name begins with "S" who was the person at
4 headquarters overseeing that operation, correct?

5 A. Yes.

6 Q. And, and for purposes of our conversation, we're going to
7 call that operation Classified Program No. 1, okay?

8 A. Okay.

9 MR. POLLACK: And if I can have Exhibit, Government
10 Exhibit No. 6 put up on the screen for the witness?

11 THE COURT: Now, do we have any issues with this
12 exhibit?

13 MR. OLSHAN: This is just for the witness, Your
14 Honor, at this point?

15 THE COURT: No, it's going to go up on the screen
16 and --

17 MR. POLLACK: Well, I was going to lay the foundation
18 to admit it, but if you have no objection to its admission, we
19 could just show it.

20 THE COURT: Hold on a second. Just wait a second.

21 All right, I assume there's no objection to this
22 exhibit. It's a government exhibit, so I assume there's no
23 objection.

24 MR. OLSHAN: There's no objection, Your Honor. There
25 was just the issue that came up this morning about it.

Laurie D. - Cross

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1 THE COURT: I understand that. We'll take care of
2 that.

3 MR. OLSHAN: All right.

4 THE COURT: All right, it may be shown to the jury.
5 We have the room set up appropriately.

6 And, ladies and gentlemen, if that light is a glare
7 and it makes it difficult for you to see what's on your
8 screens, let us know, and we'll close the blinds. Anyone need
9 the blinds closed at this point? No?

10 (Jurors shaking heads.)

11 THE COURT: All right, go ahead, Mr. Pollack. And
12 Government Exhibit 6 is in, all right?

13 MR. POLLACK: Thank you, Your Honor.

14 (Government's Exhibit No. 6 was received in
15 evidence.)

16 BY MR. POLLACK:

17 Q. And, Ms. D., you have a paper copy of it in front of you?

18 A. Yes.

19 Q. Of Government Exhibit 6?

20 A. Yes, I do.

21 Q. Go ahead and take a moment to review it. Can you just
22 describe for me generally, what is this that we are looking at?

23 A. This is an operational cable which is saying about Mr. S.
24 coming up to where we were meeting with Mr. Merlin.

25 THE COURT: I'm sorry, you're going to need to talk

Laurie D. - Cross

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1 to --

2 THE WITNESS: I'm sorry, okay. My apologies. This
3 is an operational cable that's indicating that Mr. S. is coming
4 up to travel to meet with me and with Mr. Merlin to talk about
5 the possibility of working on this operational idea,
6 Classified --

7 BY MR. POLLACK:

8 Q. Classified Program No. 1?

9 A. Classified Program 1.

10 Q. Okay. And so this is an official CIA document?

11 A. Yes.

12 Q. And this was a, colloquially, it's called a cable?

13 A. Yes.

14 Q. And it was fairly routine, was it not, that cables would
15 be created to document what happened in the course of an
16 operation, correct?

17 A. Yes. We document everything.

18 Q. If something happens, it gets put into a cable, correct?

19 A. Yes, yes.

20 Q. And then the cables then become the official record of the
21 operation, correct?

22 A. Yes.

23 Q. And someone who is, quote, read into the program or into
24 the cabinet has the ability to access these cables, correct?

25 A. Yes.

Laurie D. - Cross

214

1 Q. Okay. And this particular cable, if you'd look to the
2 second page, who's the author of this cable?

3 A. I think it's -- it looks like it's Mr. S., the originator.

4 Q. Okay. So Mr. S. wrote this cable to document his trip to
5 meet with you and to meet with Merlin, correct?

6 A. I guess so, yes. That's what it says here.

7 Q. And it describes the, the general terms of what the
8 operation is going to be, what Classified Program No. 1 is,
9 correct?

10 A. Yes.

11 Q. Similar to, as you described on the stand, that it would
12 be an effort to get flawed designs to a foreign country,
13 correct?

14 A. Yes.

15 Q. And if you'd look at the second page, about the middle of
16 that paragraph, I don't know if we can zoom in on it at all, it
17 says, "Note that the whole operational concept here is
18 deception," correct?

19 A. I'm looking for it. Hold on a second. Where do you see
20 this on the second page?

21 THE COURT: Ms. D., if you'd turn around and look at
22 the screen?

23 THE WITNESS: Oh, right here.

24 THE COURT: Yeah.

25 THE WITNESS: Okay.

Laurie D. - Cross

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1 THE COURT: That will make it easier for you.

2 THE WITNESS: Yeah, okay. Yes.

3 BY MR. POLLACK:

4 Q. And that's -- those are Mr. S.'s words, correct?

5 A. I'm -- yes, but I'm assuming he didn't do this by himself.
6 I'm sure there were people back in Washington he was working
7 with on this.

8 Q. But he was the one overseeing this program?

9 A. As far as I could tell from the field, from where I was.

10 Q. In fact, this program was largely his concept, correct?

11 A. I don't know if it was his concept. It was CIA
12 headquarters' concept.

13 Q. And it's his description of the concept that it's one of
14 deception, correct?

15 A. Well, according to this cable.

16 Q. And, in fact, it was Mr. S., was it not, who had the idea
17 to use Merlin in this operation, correct?

18 A. I, I honestly -- I guess I don't understand what you're
19 asking.

20 Q. Sure. There, there was a concept for this operation, this
21 Classified Program No. 1, that we would try to get flawed
22 nuclear designs to a foreign power, correct?

23 A. Yes.

24 Q. And then the CIA needed somebody to actually pull that
25 off, to play the role of somebody who could get these plans to

Laurie D. - Cross

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1 the foreign power, correct?

2 A. Yes.

3 Q. And you were the case officer for the particular asset
4 Merlin?

5 A. Yes.

6 Q. And Mr. S. believed that Merlin would be a good vehicle to
7 use in Operation Classified Program No. 1?

8 A. He was probably one of several people who probably thought
9 Mr. Merlin was that. I don't -- wouldn't necessarily say that
10 Mr. S. is the only person who ever thought of it. I mean, I
11 guess, you know, there's a lot of people back in headquarters.
12 It's not usually something done by one person.

13 Q. And the idea was for someone, in this case Merlin, to be
14 dangled before the foreign power, the Iranians, correct?

15 A. Yes.

16 Q. And what does it mean to dangle somebody?

17 A. I'm trying not to go into lingo.

18 Q. In general terms.

19 A. Basically, you would be putting someone in front of
20 someone who was unwitting that they had another agenda. In
21 this instance with Mr. Merlin, we wanted to place him,
22 highlight him or have himself highlight himself to the Iranian
23 government ostensibly to help them, but in reality, he was
24 helping the U.S. government.

25 Q. And this was a different role for Merlin than the role he

Laurie D. - Cross

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1 had had up until that point, where he was simply being
2 debriefed, correct?

3 A. Yes.

4 Q. But Mr. Merlin agreed to play this role, correct?

5 A. Yes, he did.

6 MR. POLLACK: If we can go ahead and put up
7 Government Exhibit 5?

8 THE COURT: I assume there's no objection from the
9 United States?

10 MR. OLSHAN: No objection.

11 THE COURT: All right, 5 is in.

12 (Government's Exhibit No. 5 was received in
13 evidence.)

14 BY MR. POLLACK:

15 Q. And Government Exhibit 5 again is another CIA operational
16 cable; is that correct?

17 A. Yes, it is.

18 Q. And can you tell who -- and this one -- I probably should
19 have noted this -- Government Exhibit 6 was dated May of '97.

20 A. Yes.

21 Q. This one is dated January of '97, correct?

22 A. Yes.

23 Q. And can you tell, Government Exhibit 5, the cable from
24 January of '97, who the author of that cable is?

25 A. It does not say here. The ID number is not there.

Laurie D. - Cross

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1 Q. But it's a cable to which you would have had access?

2 A. More than likely, yeah.

3 Q. And it's a cable to which Mr. S. would have had access?

4 A. His office that he worked in would have been the one to
5 probably see this cable.

6 Q. And if you look at the fourth line on page 2, it says "M,"
7 and that's Merlin?

8 A. Um-hum.

9 Q. "M's operational motivation for this activity is almost
10 purely financial, and his desire to continue earning income
11 from the CIA is something that Merlin was very frank and honest
12 about during his meetings with C/O and CPD officers."

13 Now, "C/O" stands for case officer?

14 A. Yes, it does.

15 Q. And, and just to be complete, "CPD" stands for
16 Counterproliferation Division?

17 A. Yes.

18 Q. And was Merlin very frank and honest in his discussions
19 with you that his motivation to participate in this operation
20 was almost purely financial?

21 A. Based on this cable. I don't remember every specific
22 detail of that conversation, but presuming that I'm the one who
23 wrote this, I don't know that -- I would assume I'm probably
24 the person who wrote this, but, but yeah.

25 Q. And with respect to the actual operational planning,

Laurie D. - Redirect

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1 the -- with respect to the actual operational planning, it's
2 true, is it not, that Mr. S. did nearly everything and that you
3 had little involvement in that planning?

4 A. What do you mean?

5 Q. With respect to the details of how this operation was
6 going to play itself out, is it fair to say that Mr. S. had a
7 much larger role in coming up with that plan than you did?

8 A. I would think so because he was back in headquarters and I
9 was not. I was handling the asset.

10 Q. And then your tenure in handling the asset ended in July
11 of 1997?

12 A. Yes.

13 MR. POLLACK: I don't have anything further, Ms. D.
14 Thank you.

15 THE WITNESS: Okay. Thank you.

16 THE COURT: All right, any redirect?

17 MR. OLSHAN: One second, Your Honor. Thank you.

18 REDIRECT EXAMINATION

19 BY MR. OLSHAN:

20 Q. Ms. D., one of the cables that Mr. Pollack showed you
21 reflected that Mr. Merlin was candid and honest about his
22 desire for financial payment; is that correct?

23 A. Yes.

24 Q. And in your dealings with him, did he tend to fulfill his
25 side of the bargain in return for the payment that the CIA

Zach W. - Direct

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1 provided?

2 A. Very much so, yes.

3 MR. OLSHAN: No further questions.

4 THE COURT: Any recross?

5 MR. POLLACK: No, Your Honor, thank you.

6 THE COURT: Is anybody going to call this witness
7 again?

8 MR. OLSHAN: No, Your Honor.

9 MR. POLLACK: No, thank you.

10 THE COURT: All right. Ms. D., thank you for your
11 testimony. You're free to leave. If you'd go with Mr. Wood?

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 THE COURT: We'll bring the next witness in.

15 MR. TRUMP: Mr. Zach W.

16 Your Honor, this is the first witness that we would
17 probably use these notebooks for to go through about four or
18 five cables.

19 THE COURT: Approach the bench for one second.
20 Everybody come up for a second.

21 (Sealed Bench Conference A not transcribed in this
22 volume.)

23 ZACH W., GOVERNMENT'S WITNESS, AFFIRMED

24 DIRECT EXAMINATION

25 BY MR. TRUMP:

Zach W. - Direct

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1 Q. Would you please state your full name and your last
2 initial.

3 A. Zach W.

4 Q. And we're spelling Zach Z-a-c-h?

5 A. Z-a-c-h.

6 Q. Mr. W., have you previously been employed by the Central
7 Intelligence Agency?

8 A. Yes, I have.

9 Q. And when did you begin working for the CIA?

10 A. I began work for the CIA in May of 1983.

11 Q. And when did you end your official employment with the
12 CIA?

13 A. I retired in October of 2012.

14 Q. Do you maintain a relationship with the agency as a
15 contractor?

16 A. I do. I -- since retirement, I work as a contractor in a
17 part-time capacity for a couple of different offices in the
18 CIA.

19 Q. Now, back in 1983, what were you doing when you were --
20 what was your first position with the --

21 A. My first position with the Central Intelligence Agency was
22 in a position, I think the title of it at the time was called
23 information control clerk. I stapled material that came in
24 from all around the world on the midnight shift in an office
25 that was like a mailroom.

Zach W. - Direct

222

1 Q. So essentially, you were doing clerical --

2 A. It was a clerical position, yes.

3 Q. Did you make a change in your career status at some point?

4 A. I did. In, in the summer of 1985, I joined what was then
5 known as the Directorate of Operations, now the Clandestine
6 Service, the National Clandestine Service. So I moved into the
7 professional ranks that summer.

8 Q. At some point, did you become an operations officer or
9 case officer?

10 A. I did at the completion of training.

11 Q. Have you spent time in the, as a case officer overseas?

12 A. I have, yes.

13 Q. As well as domestically?

14 A. Domestically working out of Washington, yeah.

15 Q. Let me direct your -- well, let me back up a second. As
16 you were going through your training to become an operations
17 officer or case officer, were you trained in the proper
18 handling of classified information?

19 A. I was. Actually, I probably got some training in that
20 beginning in 1983. I handled a great deal of classified
21 information, and so yes, you're trained on maintaining its
22 security and keeping things, keeping things secure.

23 Q. But back in 1983, you didn't deal with any human assets,
24 did you?

25 A. I did not, no.

Zach W. - Direct

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1 Q. In training to become an operations officer, was that part
2 of your training?

3 A. Of course, yes. To maintain the security of assets, human
4 assets is, is probably one of the, of the highest order in the
5 training.

6 Q. Is that principle, the maintaining the security of your
7 human assets, is that something that's reemphasized throughout
8 your career?

9 A. It's reemphasized throughout your career -- the answer to
10 your question is yes. The National Clandestine Service mission
11 is to recruit human assets, and so keeping them secure and safe
12 is, is critical and essential to the mission. So, of course,
13 it is reinforced in training how to do it but then reinforced
14 throughout the, throughout the process that that's part of your
15 work.

16 Q. And were you a case officer back in 1997?

17 A. I was serving as an operations officer, as a case officer
18 in 1997, yes.

19 Q. And at that time, did you become familiar with what we are
20 calling Classified Program No. 1?

21 A. I did, yes.

22 Q. Do you recall about when?

23 A. I, I believe in the summer, maybe the late spring of 1997.

24 Q. And how was it that you became familiar with this program?

25 A. Well, I don't remember the details precisely, but what

Zach W. - Direct

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1 would have happened, because it is a, was a highly sensitive
2 program, I didn't know anything about it. I didn't know
3 anything about the source. I didn't know anything about the
4 program until management came to me, probably my immediate
5 supervisor at the time, and probably with the decision of their
6 management along the chain, had decided to give me the
7 responsibility for the case as the case officer that had been
8 handling those responsibilities was moving on.

9 Q. As part -- one of those responsibilities was dealing,
10 handling a human asset they were calling Merlin?

11 A. Yes.

12 Q. Who was the case officer that preceded you in the handling
13 of Merlin?

14 A. Laurie D.

15 Q. What was the status of Classified Program No. 1 and Merlin
16 when you took over in mid-1997?

17 A. My recollection is that the case up to that point had been
18 primarily one where intelligence was obtained directly from
19 that source. The plan moving forward was to expand that,
20 change the direction somewhat into a more operationally driven
21 program or operation, as we say. It wasn't about intelligence
22 anymore. It was about using Merlin's background and skills to
23 make operational achievements.

24 Q. Now, when you -- you said you didn't know anything about
25 the program prior to your involvement in it. Did you have to

Zach W. - Direct

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1 be read into the program?

2 A. Well, yes. I would have met with Laurie D. She would
3 have given me a sense of what the case was to that point. I
4 would have also read what we refer to as cable traffic, that
5 is, a history, a documented history of virtually everything
6 that goes on with, relating to a case. I probably wouldn't
7 have read everything about it; that would be unnecessary; but I
8 would have had enough information when the time came to meet
9 and take over these responsibilities that I'd have a good sense
10 of who this person was and what, what our operational goals
11 were.

12 Q. And the documents, the cables, the materials that you
13 review were marked according to the special access of this, the
14 limited access of this program?

15 A. Correct. It was, it was very clear. In fact, you know,
16 when you are brought in and you're assigned a case like this,
17 it immediately becomes evident to the person who has those
18 responsibilities how sensitive it is because of the markings on
19 the, on the cables, the written products.

20 Q. At some point, did you meet Merlin?

21 A. I did.

22 Q. And what name did you use for yourself for when you, when
23 you dealt with Merlin?

24 A. I think at the time, I used the name Max.

25 Q. And without saying the name, how did you refer to Merlin?

Zach W. - Direct

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1 A. I would have, I would have -- how would I have referred to
2 him?

3 Q. Yes.

4 A. In his, in his true name. In his name.

5 Q. Not Merlin, but his true name?

6 A. True name, whatever that was.

7 Q. What was your job, what was your duty with respect to
8 Merlin and the status of the operation? What were you
9 instructed to do?

10 A. As a handling case officer for a human asset, you have
11 multiple responsibilities. First and foremost is to establish,
12 maintain a good relationship. You represent, you are the face
13 of the agency. Even though I was using the name Max, it was
14 very clear to him that I was from the CIA. There was no, there
15 was no misunderstanding on that score.

16 So I represent the National Clandestine Service to
17 him. It's to maintain that relationship, maintain it as a
18 positive relationship. It was also to explain to him the goals
19 and work with him to achieve those goals that we'd agreed on.

20 Q. Were you working with someone from headquarters as well?

21 A. I, I was, I was taking guidance. I was providing
22 assessment. I was providing feedback with an office at
23 headquarters, the Counter- -- in the Counterproliferation
24 Division.

25 Q. And did you have a specific point of contact within the

Zach W. - Direct

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1 Counterproliferation Division?

2 A. Yes.

3 Q. Who was that?

4 A. That person was Robert S.

5 Q. And you also called him Bob?

6 A. Bob, Bob S.

7 Q. When you met with Merlin, was Bob S./Robert S. sometimes
8 present?

9 A. Sometimes present, usually not. Usually the meetings were
10 held -- if there was a need for, for Bob to come to the
11 meetings, of course he could, but for the most part, I met
12 Merlin one on one. That's kind of standard procedure.

13 Q. And just tell us what you were doing with Merlin.

14 A. Well, the, the operation at the time, the direction that
15 was, we were going after was to use Merlin's background as a,
16 as an engineer involved in nuclear-related materials Russian
17 and use that and leverage that profile and that experience to
18 attract attention from Iranian officials involved in their
19 nuclear weapons program.

20 Q. And did you help him, coach him on how to accomplish this
21 goal?

22 A. Yeah, I'd like to think I did. I -- we worked very
23 closely coming up with potential people for him to engage. You
24 know, it's very interesting, you -- today's world is not the
25 world of, of the mid-late '90s when it comes to, you know,

Zach W. - Direct

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1 being able to Google things in and immediately quick responses.
2 The Internet was quite in its, in its earliest phases.
3 Everything was www\, etc. I mean, you had to get it right, and
4 it took a lot of effort simply even to find potential
5 individuals or organizations or institutions online to reach
6 out to, to potentially float him and then do it, do it
7 consistently and do it in such a way that would, would come
8 across to those targets as being genuine.

9 So there was a lot of back-and-forth. There was a
10 lot of engagement in a very practical way in that regard.

11 Q. And was most of the, most of the attempt to attract
12 Iranian officials done through the Internet?

13 A. It wasn't entirely done through the Internet. Some of it
14 was done in genuine old-fashioned put a stamp on the letter and
15 send it and see what response we get. Yeah, the whole goal
16 was -- that wasn't just done to accomplish that because we
17 thought, Okay, that's how they'll respond. The goal was to
18 promote a profile that really gave Merlin credibility in his
19 efforts to engage those targets.

20 Q. And did you task him with providing you with the results
21 of his Internet work and --

22 A. Absolutely. I would, I would, for instance, see what he
23 could get on his own. I would sometimes ask Washington for
24 ideas from them. I would pass that information to him. He
25 would pass information to me.

Zach W. - Direct

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1 We'd talk very carefully about the wording of his
2 efforts to make those, those contacts, very carefully about how
3 to word it. He, he wasn't -- everything was very carefully
4 orchestrated. There was not any sort of effort alone to make
5 those decisions. There was constant contact between
6 Washington, myself, and, and Merlin and then back-and-forth.
7 So it was a continuous continuation effort.

8 Q. Did he bring you evidence of the results of his work?

9 A. Absolutely. Sometimes it was voluminous. Sometimes on,
10 you know, printer paper that we'd all laugh at today. I mean,
11 it was, it was volumes of stuff.

12 When I reflect back, I can't help but convey just how
13 different the time was with regards to technology. Today it's,
14 it's Google, print, you got a list of whatever. That wasn't
15 the case then. It took a lot of work, a lot of effort. And
16 computers themselves were, were not as reliable as they are
17 today.

18 Q. Was he doing the computer work primarily from his home?

19 A. He was. He had a computer designated for this. He did
20 other things on it, but yes, there was a -- he did. I think
21 from time to time, he may have checked to see whether he got
22 any bites from his computer at work, but he didn't do anything
23 operationally with, with that computer.

24 Q. Have you been at his home?

25 A. I was at his home, yes.

Zach W. - Direct

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1 Q. And I believe you've mentioned that the target was, at
2 this point was, was Iran?

3 A. Iran. And I think, I think it -- that might have had
4 something to do with why I was chosen to take responsibility
5 for the case. I'd done work on Iranian-related issues in the
6 past.

7 Q. Were you aware of any other targets at that point?

8 A. No.

9 Q. And what else was going on in the operation from, from CP
10 standpoint? What, what other aspects of the operation had to
11 sort of fall in place in order to move forward?

12 A. Sure. Well, it did no good if you were trying to engage
13 these targets if you didn't have something to provide them or
14 something to sort of bait them if contact was made, and so
15 quite separate but parallel was an effort by individuals in CP
16 Division to create a material that ideally Merlin could then
17 use to attract these targets.

18 Q. Were you heavily involved in that process?

19 A. I wasn't heavily involved in it. I was aware of it. I'm
20 not, I'm not a technically minded person particularly, but I --
21 it wasn't that sophisticated that I didn't understand it, but I
22 was not directly involved in anything related to that, that
23 material itself.

24 Q. How was it that you would be communicating with those who
25 were aware of it? Was that --

Zach W. - Direct

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1 A. Most of it was, most of it was really informing me and my
2 office of the status of that effort. It wasn't really, it
3 wasn't -- there would be a message sent about a topic, and in
4 it would also say something like, you know, and that's, in
5 parallel we're working with the next phase or so forth.

6 So it was often I was informed of it, but it wasn't
7 something that I was directly aware of, you know, on a
8 day-to-day basis by any means.

9 Q. And when you refer to your office, your office at this
10 time was in New York?

11 A. In New York City.

12 Q. At some point, were you going to move on to a new
13 assignment?

14 A. Yes. In the, in the fall of 1998, an opportunity came for
15 me to, to move on to another office.

16 Q. So what is it that you did with Classified Program No. 1
17 and, and Merlin?

18 A. The office identified an incoming officer who would take
19 on not only responsibilities for this case but other, some
20 other responsibilities of mine and I think some other
21 responsibilities of other, other people as well, but it was
22 time to transfer responsibility from, from the -- of this case
23 to another officer.

24 Q. And who was the officer that was going to get Classified
25 Program No. 1 and Merlin?

Zach W. - Direct

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1 A. Mr. Sterling.

2 Q. And do you see him in the courtroom?

3 A. I do.

4 Q. Would you point him out, please?

5 A. Right there (indicating).

6 THE COURT: Any issue about the identification?

7 MR. POLLACK: No, Your Honor. There's no question
8 this is Mr. Sterling.

9 THE COURT: All right, the identification is
10 established.

11 THE WITNESS: This would have been in the same
12 regards that, when responsibility was transferred to me a
13 year-and-a-half earlier, similar circumstances.

14 BY MR. TRUMP:

15 Q. Where was Mr. Sterling, the defendant, working at the time
16 the, the change was going to take place?

17 A. I, I don't know for sure. I know headquarters. I know
18 Washington. I know the Washington area. I believe
19 Counterproliferation Division, but I --

20 Q. But he wasn't in New York yet?

21 A. He was not in New York yet. And I could be wrong on, on
22 that.

23 Q. Where was the -- was there a meeting planned at which
24 point you would introduce Mr. Sterling to Merlin?

25 A. There was a meeting planned. It was not for that sole

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1 purpose only, but that was going to be, it was a sort of
2 phased-in effort because the plan was to introduce Mr. Sterling
3 even before he moved to New York City.

4 Q. Where was that meeting going to take place?

5 A. San Francisco, California.

6 Q. And did it, in fact, take place in San Francisco?

7 A. It did take place in San Francisco.

8 Q. Approximately when was that?

9 A. In, in I want to say mid-November of 1998.

10 Q. And who were the people who went to San Francisco for that
11 meeting?

12 A. Merlin and Merlin's spouse, myself, Mr. Sterling, Bob S.,
13 and a, a contractor who was primarily technically, technically
14 focused by the name of Len.

15 Q. And what was planned for, for San Francisco?

16 A. Well, what was planned, there were a couple of important
17 things that were to take place there. One is for Merlin to
18 meet Mr. Sterling, and that was important because that
19 relationship was important to get off to a good start. It was
20 also time for all those efforts that had gone into the crafting
21 of the, the product, that ideally if all things came to be, we,
22 we would have Merlin attract the Iranian targets.

23 So there was a time to show that product at least in
24 its initial approved draft form to Merlin and talk about with
25 him the story he would tell to any Iranians that might show

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1 interest.

2 Q. Let's get back to the purpose in terms of meeting

3 Mr. Sterling. Had you met Mr. Sterling before?

4 A. I had met Mr. Sterling before.

5 Q. And how was that? How was it that you came in contact
6 with him?

7 A. Well, we were both officers who had worked on
8 Iranian-related issues in the past, and although I had never
9 worked with Mr. Sterling up to that point in any, in any
10 great -- that I remember in any specific cases, we would run
11 into each other at different forums related to Iran or working
12 that, that issue and so on, and so I knew him in that context.

13 Q. So in San Francisco, was Merlin introduced to
14 Mr. Sterling?

15 A. He was.

16 Q. How did it go?

17 A. I think it went very well. It went very well. He was
18 introduced, I think the first time was at, was at breakfast.
19 It was sort of a public setting, so it's a little bit, a little
20 formality to that, but it was all very, it was -- I think it
21 went very well. I think the relationship seemed to go very
22 well.

23 Q. And did Mr. Sterling also meet Mrs. Merlin?

24 A. He did. You know, the, the meetings in San Francisco took
25 place in a, in a way that there would be some social time and

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1 then there would be some work, focus on work, and then there
2 would be some social time, some down time for that relationship
3 to take off both with Merlin and, and Mrs. Merlin, and so over
4 the course of a couple days, there was a combination of sort of
5 social interaction, maybe some meals, some local -- some work
6 behind closed doors where we're talking about the specifics of
7 the case and how we're moving it forward, etc., etc., and then
8 followed by some more social time.

9 Q. Let's talk about the work behind closed doors. At some
10 point, you had meetings to talk about the operation; is that
11 right?

12 A. We did.

13 Q. Where did they take place?

14 A. They took place in a, in a hotel suite.

15 Q. And who was present while the operational meeting was
16 taking place?

17 A. Myself; Mr. Sterling; Bob S.; Len, this technical officer;
18 and Merlin.

19 Q. And Mrs. Merlin was not participating in those meetings?

20 A. No.

21 Q. Who was the most senior person in terms of the operation
22 present at the meeting?

23 A. Bob S.

24 Q. Were the -- was the product shown to Mr., Mr. Merlin?

25 A. Yes. The product was, it was sort of a diagram, and I, I

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1 also recall sort of a complimentary list of, of parts included
2 in the diagram of this piece of technology to which he could
3 realistically claim to have knowledge of enough to attract the
4 Iranian targets.

5 Q. Do you recall today what, what type of technology we're
6 talking about?

7 A. It was a, I believe, a firing set from a -- for a nuclear,
8 a nuclear missile.

9 Q. We're dealing with nuclear weapons here, right?

10 A. Nuclear weapons.

11 Q. What happened when Merlin was given the diagram and the
12 list?

13 A. Well, I, you know, he, he is an engineer, and he looked at
14 it, and he said, well, you know, it should be this and it
15 should be this, but it was, it was a good discussion actually.
16 It was a quite good discussion.

17 His reaction was, gee, maybe you should have some of
18 this on, more on this list, or this doesn't match. There was a
19 good dialogue that went back and forth about, about the
20 product.

21 It was very important, I think, for all of us at the
22 time to incorporate and to listen to Merlin's ideas on it, but
23 there was a good give-and-take, and he had some questions that
24 Len, the technical person, had to go back to the people who
25 helped him craft this diagram and this list of parts and so

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1 forth and clarify.

2 Q. And do you recall some of the specific concerns that he
3 raised?

4 A. He, he thought that there were parts -- there was a
5 diagram, and then there's a list of parts, and I -- my
6 recollection is that there were things included in the diagram
7 that were absent from the parts, and he thought there should
8 have been, there should have been, everything here should have
9 been here, but as we explained to him, the legend that we were
10 prompting him to use and coaching him to use with the Iranians,
11 we explained to him why that, that it had been crafted that
12 way.

13 Q. These, these questions that he asked, what, were they
14 taken seriously?

15 A. Oh, they were taken quite seriously, quite seriously. You
16 know, this is, this is serious business, and it's, it was
17 critical for those of us working to achieve those goals to have
18 Merlin committed 100 percent to the process. He's the one out
19 there engaging these targets, serious people, and so the key
20 was to craft a story and make sure he was comfortable with it
21 so when he raised issues -- and I say "issues." That was
22 not -- for the most part, it was accepting, okay, I think this
23 can work.

24 Q. Did you or Robert S. or Len or anybody else answer all of
25 his questions at those meetings?

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1 A. No, we couldn't. We couldn't because some of the
2 questions were even beyond the technical expertise of Len, who
3 was there. It was important for, for us to get back to him,
4 and he accepted that. He accepted that.

5 Q. And was it planned to get back to him?

6 A. Yeah, I got back to him. I got back to him a couple weeks
7 later specifically.

8 Q. Did you have any private, one-on-one conversations with
9 Merlin during, during these meetings or during the social
10 activity?

11 A. I did. I had one, one short -- we'd started the day with
12 breakfast, and then we'd gone into meetings, and then I think
13 there was a lunch break, and then we spent the afternoon in
14 more meetings, and at the end, pretty much everyone left. I
15 had been meeting Merlin at that point for a year and a half or
16 however long it was, and so I probably had the best
17 relationship, and I stayed behind and spoke to him and got his
18 temperature, took his sort of temperature on what he thought of
19 the new officer who would be taking over, and he was very
20 positive about it.

21 This -- I had mentioned the fact of an introduction.
22 It didn't come as a surprise to him in San Francisco. He knew
23 he'd be meeting someone new, and he'd now had that experience a
24 couple of times in his relatively short association with the
25 agency, so it, it was not, it was not a new thing to him.

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1 Q. Did you have any private conversations or conversations
2 solely with Mr. Sterling while you were in San Francisco?

3 A. I'm sure I did. I'm sure I did because it's just the way
4 I work, but I don't, I don't honestly remember anything
5 substantive. We would have been talking very much about, about
6 the case. So it's quite possible that it would have been
7 looking over the diagram and we would have walked to another,
8 to another part of the suite and had a conversation about this
9 or that, but I don't, I don't remember it as being any
10 substantive issue.

11 Q. Did Mr. Sterling raise any concerns with you or address
12 you on any issues that had come up during the meetings?

13 A. No, no, no. I, you know, I thought it was a -- I thought
14 it was a great case, and I thought it had great potential, and
15 I think that seemed the view of everyone. I felt, I felt a
16 little saddened that it had not gotten further along during my,
17 during my tenure; that's all.

18 Q. Did Merlin and Mrs. Merlin socialize with Mr. Sterling and
19 Robert S. without you present?

20 A. They did. I went -- I returned back to New York the
21 following day, and -- or at least a day later than everyone
22 else. I went back early. It was time for that relationship
23 to, to be the most important one, and so they did. They spent
24 some time. They, they took a morning or an afternoon and went
25 off to do some Wine Country touring and so forth to build that

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1 relationship.

2 Q. You were not present with them?

3 A. I was not.

4 Q. Did you know where they went?

5 A. I know they went to Wine Country. I don't know whether it
6 was Sonoma or Napa or -- I don't know.

7 Q. So how was it left with, with Merlin at the conclusion of
8 these meetings?

9 A. Well, we'd -- at the conclusion of the meetings, we'd gone
10 over a couple --

11 Q. In terms of the operation.

12 A. Yeah, right. We'd gone over a couple of times the
13 specifics and how, how he was supposed to engage the potential
14 targets that would come his way. We repeated that, went over
15 it a couple of times. He asked some questions. We, we
16 explained that it wasn't just a matter of he would be out there
17 alone. He'd be potentially representing others unknown,
18 unnamed, went over that as a legend, as a story. We went over
19 it repeatedly so that he was secure with it.

20 And as far as his questions went on the material on
21 the diagram, we said we'd get back to him, and we, and we did a
22 couple weeks later.

23 Q. You returned to New York?

24 A. I returned to New York.

25 Q. And you're still the case officer --

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1 A. I'm still the case officer.

2 Q. -- with respect to this program.

3 So what happened when you got back to New York in
4 terms of your follow-up?

5 A. I had a meeting scheduled with him not too much longer.
6 It might have, it might have been the end -- maybe ten days
7 later, something like that, and I would have collected the
8 receipts. I would have been responsible for all of the
9 administrative things to the, to the case, all of his, all of
10 his expenses out in San Francisco, so there would have been
11 that, and then I would have, I would have also relayed to him
12 information that had already come.

13 I think at that point, we hadn't quite gotten clarity
14 yet on, on where -- on his issues. I don't think that was done
15 at my personal meeting with him. I don't think that was
16 conveyed until a subsequent meeting just a few days later after
17 Mr. Sterling had arrived in New York.

18 Q. So at this first meeting that you had, Mr. Sterling was
19 not present?

20 A. No. It was, it was -- I think it was more on research.
21 It was also more on things he was doing to gain access to
22 targets. It was administrative for the most part. I could be
23 wrong; it's been a long time; but, but where we really
24 explained to him, you know, addressed his questions that he had
25 about the material was done at the final meeting I had with

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1 Merlin, where Mr. Sterling was, was present.

2 Q. The things that we've been talking about, how are they
3 documented as part of the CIA's recordkeeping?

4 A. We communicate in written form, in what we call official
5 cables. It, it -- the parlance in our organization is that
6 it's never happened until it's written down, so when there's a
7 meeting when there's something like this that happens, we
8 record it, we make the official U.S. government record of it on
9 whatever end of the spectrum, whether it's in the Washington
10 end, whether it's the field end, and that's how we communicate.

11 There might be a phone call in between to report on
12 something urgent, but for the most part, everything on which
13 action is taken requires something written down, a cable.

14 MR. TRUMP: At this time, I'd like to ask that the
15 jurors can get their notebooks.

16 THE COURT: All right. Now, ladies and gentlemen,
17 what has been done is many of these cables, because I noticed
18 you were squinting before when you were trying to look at the
19 screens, are now in a notebook. It's very important that you
20 not go rummaging through the book. Just only turn to the
21 particular tab that's being addressed.

22 And, Mr. Wood, do you have those?

23 MR. TRUMP: Before they open their notebooks, I'd
24 like to take the witness through a series of foundation
25 questions with respect to them, unless there's no objection to

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1 their admission.

2 THE COURT: What are -- list the exhibit numbers that
3 you're going to be discussing.

4 Don't open the books yet, folks.

5 MR. TRUMP: 8, 10, 13, 14, and 15.

6 THE COURT: All right. Are there any objections to
7 those exhibits?

8 MR. POLLACK: No, Your Honor.

9 THE COURT: All right. So 8, 10, 13, 14, and 15. 8,
10 10, 13, 14, and 15 are in evidence.

11 (Government's Exhibit Nos. 8, 10, and 13 through 15
12 were received in evidence.)

13 MR. TRUMP: Your Honor, I guess if there's no
14 objection to any of the cables, we could move them all in
15 but --

16 THE COURT: Well, let's keep it organized. Right
17 now, again, the jury should not open the books until we address
18 a particular exhibit.

19 BY MR. TRUMP:

20 Q. And do you have the notebook in front of you, sir?

21 A. I don't.

22 MR. TRUMP: Could he have an exhibit book, please?

23 THE COURT SECURITY OFFICER: An exhibit book?

24 THE COURT: An exhibit book for the witness, please.

25 THE COURT SECURITY OFFICER: What page?

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1 THE COURT: 8. I assume 8 is the first one you're
2 going to discuss? Wait, do you have the separate one?

3 MR. TRUMP: If you just hand him the binder, he can
4 follow along.

5 THE COURT: All right, which exhibit number,
6 Mr. Trump?

7 MR. TRUMP: Exhibit 8.

8 THE COURT: 8. So, folks, you may now open your
9 books to Exhibit 8, please.

10 BY MR. TRUMP:

11 Q. Do you see Exhibit 8 in front of you?

12 A. I do. I have it.

13 Q. And is that one of the official cables you just --

14 A. Yes. That would be an example of a cable that would have
15 been -- we would have written on this case.

16 Q. And are there cables sent from the field as distinguished
17 from cables sent from headquarters?

18 A. Correct, there are. And that, that site is generally
19 designated up here, where it says at the very top under the
20 first "Secret," "To CIA Office No. 2." That would have
21 designated the location it was being sent to, would have been
22 coming out of Langley, which would have indicated Washington.

23 Q. So in this case, New York is CIA Office No. 2, correct?

24 A. Correct.

25 Q. And so this, this is a cable that was sent to you?

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1 A. Yes.

2 Q. And do you recall who sent it to you?

3 A. I, I don't recall specifically. I'm assuming that the
4 person who wrote it either was Robert S. or worked for him or,
5 or something. It says down here "Originator, Mr. S.," so I'm
6 looking at the very bottom.

7 Q. And "CP" is counterproliferation?

8 A. Counterproliferation.

9 I would also say from a, from a content point of
10 view, this is an exact example of the kind of go, the
11 back-and-forth that went on. In other words, I would have
12 worked with Merlin to craft language of a letter that he might
13 send to the potential targets. He wouldn't just send it. I
14 didn't have the authority to say, "Send it." I would have to
15 work with him. We might massage it to --

16 MR. POLLACK: Your Honor --

17 THE COURT: Yeah, I think the answer is going --

18 MR. POLLACK: -- there's no pending questions.

19 THE COURT: Right. It's better to just wait for
20 the --

21 THE WITNESS: Oh, I'm sorry. I'm sorry.

22 BY MR. TRUMP:

23 Q. Let's just --

24 A. Sure.

25 Q. -- talk a little bit about understanding the cables so

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1 that --

2 A. Gotcha.

3 Q. Since you received this cable, generally, it is something
4 that you are either being informed of or being tasked to do by
5 Mr. S. or someone within CP?

6 A. Correct, correct.

7 Q. Referring to paragraph 2 --

8 A. Um-hum.

9 Q. -- is that an example of the exchange that you had
10 described previously in which --

11 A. Exactly.

12 Q. -- you and Merlin would discuss his Internet searches and
13 things like that?

14 A. Yep.

15 Q. And then you got back to CP on certain suggestions?

16 A. Correct.

17 Q. The rest of paragraph 2 reflects CP keeping you up to date
18 on what's going on?

19 A. Correct. Also, as I sort of described in parallel, yeah.

20 Q. And this type of cable was one that went back and forth --

21 A. All the time.

22 Q. -- all the time on this operation?

23 A. When there was something to be said, yeah.

24 Q. And let's go to Exhibit 10.

25 THE COURT: All right, you folks may turn to 10 now.

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1 BY MR. TRUMP:

2 Q. Now, is that a cable you sent?

3 A. Yes.

4 Q. And you sent it to whom?

5 A. To, to Langley, to headquarters.

6 Q. And who was getting these cables from you at headquarters?

7 A. A very select group of people in Counterproliferation
8 Division who were read into the case.

9 Q. And that would include Robert S.?

10 A. And that would have included Robert S.

11 Q. And you are Mr. W.?

12 A. And I am Mr. W.

13 Q. And what does this cable reflect?

14 A. The status of the case, the planning for the eventual trip
15 to San Francisco. This is the first time I tell Merlin that
16 I'll be leaving the post for another job and that someone new
17 will be coming in. He provided some additional things related,
18 I think, to his computer.

19 Q. And the date of this cable is at the top, correct?

20 A. Correct. Right under the page No. 1, that's the date it
21 would have been, the 29th of October, 1998.

22 Q. So on the 29th of October, you're informing people back at
23 headquarters that you had a meeting with Merlin?

24 A. Just two days before, on the 27th of October.

25 Q. And paragraph 2 is the paragraph that relates to

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1 discussion that was had at that meeting?

2 A. Correct.

3 Q. Including problems with Merlin's computer, right?

4 A. Yep.

5 Q. Paragraph 3 anticipates your meeting in San Francisco,
6 right?

7 A. Correct. It's almost purely administrative.

8 Q. And then paragraph 4 is the discussion of the change from
9 you to a new case officer?

10 A. Correct.

11 Q. And let's jump ahead then to No. 13.

12 THE COURT: All right, Exhibit 13.

13 BY MR. TRUMP:

14 Q. Do you see cable 13?

15 A. I do. I have it in front of me.

16 Q. What's the date of that cable?

17 A. The 17th of November.

18 Q. And did this cable originate out of New York or out of
19 headquarters?

20 A. Out of New York to headquarters.

21 Q. And were you the author of this cable?

22 A. I was the author of this cable.

23 Q. What are you describing generally in this cable?

24 A. Basically, everything that happened in San Francisco in a,
25 in a nutshell. Not every he said/she said, but everything from

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1 how the meetings were, were broken down to basically how the
2 schedule went, to how people spent their time, to questions
3 that Merlin had, how it all seemed to, to go.

4 Q. And in paragraph 2, for example, that's where the cable
5 reflects Mr. Sterling's introduction to, to Merlin?

6 A. Correct.

7 Q. And the fact that the plans were shown to, to Merlin?

8 A. The fire set plans. And we began to work on his, his
9 story that he was going to use with the potential targets.

10 Q. Let me refer you to the fourth paragraph.

11 A. Um-hum.

12 Q. Does that paragraph discuss -- do you discuss in that
13 paragraph the after lunch meeting with Merlin?

14 A. I do.

15 Q. And in that paragraph, what do you discuss with respect to
16 the legend, the cover arrangement with, with Merlin in terms of
17 how he was going to describe these plans?

18 A. Well, the basis of his story was going to be that he was
19 fronting for others, other unnamed associates of his who had --
20 who he would have known and with whom he would have engaged
21 from his previous experience in Russia.

22 Q. Let's, let's deal specifically with paragraph 4. In that
23 paragraph, do you describe M as the middleman?

24 A. Yeah.

25 Q. And right after that, how do you describe the plans?

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1 A. The fire set plans were not of his design but came from
2 other Russians whom he had met and who wanted to market them
3 for financial gain.

4 Q. And keep going.

5 A. Merlin was serving as the middleman. The plans were
6 incomplete but would be found to be true and accurate upon
7 Iran's careful review. Basically, if the Iranians wanted the
8 information that would make the plans complete, they would have
9 to pay Merlin and his unnamed colleagues.

10 This, this was the core of the story.

11 Q. Was that, in fact, discussed at the meeting?

12 A. That was, in fact, discussed at the meeting.

13 Q. Did Merlin recognize at some point that the plans were
14 incomplete?

15 A. Yes, he did. I don't know that he said they were
16 incomplete, but I think he -- yeah, I think he recognized that,
17 yeah. The goal was never, ever to provide complete plans to
18 Iran on how to build a nuclear weapon.

19 Q. And Mr. Sterling was at this meeting?

20 A. Mr. Sterling was at that meeting.

21 Q. Now, let's jump ahead to 14.

22 THE COURT: Exhibit 14.

23 BY MR. TRUMP:

24 Q. Was this a cable you received in the context of your work
25 with Merlin?

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1 A. No, this was a cable that I probably wrote in part with
2 Mr. Sterling after --

3 Q. Exhibit 14?

4 A. Excuse me?

5 Q. No. 14.

6 A. No. 14, I'm so sorry. I thought I had 14. I'm so sorry.
7 I'm sorry.

8 This was a cable I would have received from
9 Washington.

10 Q. And what's the date on this cable?

11 A. 25 November 1998.

12 Q. And what is the context of receiving this cable in the
13 context of your San Francisco meeting?

14 A. To help those of us who were going to meet Merlin to
15 explain to him and give him answers to the questions he raised
16 about the, the material in San Francisco.

17 Q. And in -- was this the way that you got the information
18 from headquarters through the lab that you would then later
19 take to, to Merlin?

20 A. Yes, this was how.

21 Q. And in paragraph 2, it discusses the question that Merlin
22 had at the meeting, the request to verify the accuracy of the
23 schematic and the parts list presented to Merlin during the
24 training session? That's referring to the San Francisco
25 meeting?

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1 A. Correct.

2 Q. What does it say following that, "As we had expected"?

3 A. "As we had expected, the inclusion of certain assemblies
4 on the parts list but not on the schematic was indeed
5 intentional, with the goal of suggesting that the anonymous
6 fire set designer knew that these two assemblies, these
7 specific parts, were essential but did not know how to make the
8 spec or spec them in any detail. That would be his story to
9 the Iranians if they were to raise this issue."

10 Q. So this is what you're to take back to Merlin to respond
11 to the questions that he had at the meeting?

12 A. Correct.

13 Q. And paragraph 3 is further advice as to how you should
14 explain this to Merlin?

15 A. Exactly, yes. The plan to -- yes.

16 Q. And then finally, 15.

17 THE COURT: Exhibit 15.

18 BY MR. TRUMP:

19 Q. What is the date of that cable?

20 A. 11 December 1998.

21 Q. And were you the author of this cable?

22 A. I was. And I, I think I coordinated it with, with
23 Mr. Sterling.

24 Q. Was this your last cable as case officer on this, on this
25 program?

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1 A. Case? Yes.

2 Q. And just generally, what was -- this cable reflects what?

3 15.

4 MR. MAC MAHON: Thank you.

5 MR. TRUMP: Exhibit 15.

6 THE WITNESS: Um-hum.

7 BY MR. TRUMP:

8 Q. Was this the follow-up to the meeting at which you were
9 going to explain to Merlin --

10 A. Correct. This was our, this was our opportunity to
11 address his, the questions he'd raised.

12 Q. When did the meeting take place?

13 A. December 10, in the evening.

14 Q. That was in New York?

15 A. In New York City.

16 Q. And who was present at the meeting?

17 A. Myself, Merlin, and Mr. Sterling.

18 Q. And does paragraph 3 accurately reflect the information
19 that you provided to Merlin that you got from the lab?

20 A. Yes, it does.

21 Q. And would you just briefly summarize that? Paragraph 3.

22 A. Can I, can I read a section from it?

23 Q. Sure.

24 A. "It was explained to Merlin that it made sense for the
25 designer of the fire set to know that certain parts, mainly

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1 these two, are included within the fire set design but that he
2 would not necessarily know how to configure such elements; in
3 other words, the designer knows what they are and where they go
4 in a schematic, but he would not know how to design such parts
5 himself, therefore negating them from the parts list."

6 Q. And right before that sentence, the lab reiterated that
7 the discrepancy between the schematic and the parts list that
8 Merlin saw was, in fact, intended?

9 A. Was intended. And that we told him that.

10 Q. What was Merlin's response when you provided this
11 explanation?

12 A. Merlin was always trying to make the, you know, in this,
13 in this period, as I recollect, was always trying to make the
14 product better, more complete, more understanding, and so he
15 accepted it. He had some additional follow-up questions, maybe
16 suggesting that some, some of the parts be identified in
17 Russian, maybe we look at it in a different way or so forth and
18 so on, but there was -- this was not an issue of conflict at
19 all.

20 There was, there was no -- this was a genuine
21 conversation on how to, how to move this forward.

22 Q. Now, during that meeting, did, did Merlin express any
23 concern that perhaps you were asking him to hand over
24 technology to the Iranians that would allow them to build this
25 device?

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1 A. No, never. Not at this meeting or at any other meeting
2 that I participated.

3 Q. How about Mr. Sterling? Did he express any concerns that
4 somehow this was a mismanaged, bungled operation?

5 A. No, not when I was there.

6 Q. And that, and that somehow we would be -- we, the
7 government, would be handing over technology that would allow
8 the Iranians to advance their nuclear weapons program?

9 A. No. That was, that was, that was never discussed. The
10 goal was always very clear to Merlin, to provide quite the
11 opposite.

12 Q. You sum up this cable in paragraph 7?

13 A. I do.

14 Q. And as you sum it up, when you left that meeting, what was
15 your impression of where you stood in the operation?

16 A. Well, I was out of the operation. I thought that it was
17 teed up and, and moving along. I mean, all parts seemed to be
18 coming in sync.

19 Where we were lacking at that point was that we
20 didn't have a legitimate target. You know, paragraph 4 is
21 interesting in that regard, too, on this.

22 Q. And did you have any concern at all with the changeover
23 from Mr. Sterling -- from you to Mr. Sterling as related to, to
24 Merlin?

25 A. I had no concerns whatsoever.

Zach W. - Direct

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1 Q. Was this the last time you saw Merlin?

2 A. It was.

3 Q. What type of electronic access did you have at your New
4 York office with respect to this type of cable traffic?

5 A. While I was responsible for it --

6 Q. While you were responsible for it.

7 A. While I was responsible for it, I would have access on my
8 computer to a certain file, that's the best way to describe it,
9 that would give me access to all the messages, all the cables
10 related to the case that came to New York.

11 Q. But if, if Robert S. sent out a cable to some other office
12 somewhere and didn't copy New York, you didn't get it?

13 A. I would not see it. I wouldn't have anything to do with
14 it.

15 Q. Did you maintain any -- did you -- sorry, poor phrasing.

16 When, when Merlin gave you stuff, documents, e-mails
17 and things, how did you handle that information?

18 A. Some of this I kept in a, in what could best be described
19 as sort of a soft file. Maybe the most recent cable traffic
20 printed up. Maybe some of the material that he'd given me he
21 retained copies, I retained copies, material he'd pulled down
22 off the Internet that we might be actively pursuing, there
23 might be a folder like that, and I would have maintained it in
24 my, in my safe.

25 Q. Was it maintained in the same manner as documents that

Zach W. - Direct

257

1 were actually marked by the agency? In other words, Merlin
2 didn't have any stamps to put on the documents: Secret, Top
3 Secret, whatever?

4 A. Well, he didn't have any of that -- he would have had
5 access that he pulled down off the Internet, none of which is
6 classified.

7 Q. Once it came to you --

8 A. Yes.

9 Q. -- how did you handle it?

10 A. I would have handled it -- I would have put the whole
11 package together, and it would have been handled, even though
12 it wasn't classified, it would have been connected to this
13 case, and I would have maintained it securely. There's
14 nothing, there's nothing classified about it, but once you put
15 piece 1 with piece 2, it becomes sensitive, and you maintain it
16 accordingly.

17 Q. And the reason for that is it provides a connection
18 between you and Merlin and this operation?

19 A. Well, and also you have to understand there's certain
20 things if he pulled it off of his computer, if he printed it
21 off his computer, there might have been elements about his
22 computer that were on there. The material he pulled wasn't
23 necessarily classified, but now elements related to his
24 computer were. You maintain his secrecy, his safety, and
25 securely. That's why you treat it as sensitive.

Zach W. - Direct

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1 MR. TRUMP: The Court's indulgence?

2 THE COURT: Yes, sir.

3 MR. TRUMP: The Court's indulgence?

4 Q. Now --

5 THE COURT: Are you using the notebooks any further?

6 MR. TRUMP: I don't think so, Your Honor.

7 THE COURT: All right, folks, you can close them up
8 then, all right? Thank you.

9 BY MR. TRUMP:

10 Q. Do you know someone by the name of James Risen?

11 A. I, I know who he is. I don't know him.

12 Q. Have you ever met him?

13 A. No.

14 Q. Have you ever talked to him?

15 A. No.

16 Q. Did you provide any information to him about anything you
17 worked on at the CIA?

18 A. Never.

19 Q. Have you ever discussed Classified Program No. 1, Human
20 Asset No. 1, Merlin, with anyone that you knew who was not
21 cleared to receive that information?

22 A. No.

23 Q. After you left New York and you went on to other things,
24 did you ever -- were you ever read back into the program?

25 A. No.

Zach W. - Cross

259

1 Q. As a result, were you able to follow what happened with
2 Merlin and what happened with the operation?

3 A. No. It wouldn't have been anything that would have been
4 appropriate for me to follow up on. That's not to say there
5 might not have been a casual conversation in a cafeteria
6 sometime saying, you know, "How are things going?"

7 "Great."

8 But that would have been truly the extent of the
9 details.

10 MR. TRUMP: The Court's indulgence?

11 Nothing further, Your Honor.

12 THE COURT: All right, Mr. Pollack?

13 MR. POLLACK: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. POLLACK:

16 Q. Good afternoon, Mr. W.

17 A. Thank you. Good afternoon.

18 Q. As I understand it, you were the case officer for Merlin
19 from approximately July of 1997 to approximately November of
20 1998; is that correct?

21 A. Yeah, I think December '98.

22 Q. Okay. And it wasn't until the very end of your tenure as
23 Merlin's case officer that you even had these plans or
24 schematics available, correct?

25 A. That's correct.

Zach W. - Cross

260

1 Q. So during the bulk of your tenure, the year-plus leading
2 up to that point --

3 A. Right.

4 Q. -- what you were doing with Merlin is you were dangling
5 him in front of the Iranians, correct?

6 A. Um-hum. We were, we were building his legend.

7 Q. Building his legend is his story, correct?

8 A. Yeah, yeah. His story.

9 Q. And specifically doing things that might call to the
10 attention of the Iranians his existence, correct?

11 A. That was the goal.

12 Q. That was the goal.

13 And so you were helping him, for example, in sending
14 e-mail messages or letters by e-mail to Iranian scientists,
15 correct?

16 A. Correct.

17 Q. Or Iranian scholars?

18 A. Or institutions.

19 Q. Or Iranian institutions, scholars in the nuclear field,
20 correct?

21 A. Yes.

22 Q. And in those e-mails, Merlin would explain somewhat
23 cryptically, but explain that he had some information that he
24 thought might be of interest to the people that he was sending
25 these e-mails or letters to, correct?

Zach W. - Cross

261

1 A. Yes.

2 Q. And that he would be interested in meeting with somebody
3 to, to talk about the information that he had, correct?

4 A. Correct.

5 Q. And you also assisted him in, in identifying academic
6 conferences that he could go to where there might be scientists
7 or people in the nuclear field, correct?

8 A. I, I think so. I don't recall sending him on any.
9 That's, that's certainly a viable idea and sounds right. I
10 don't, I don't remember anything.

11 Q. You just don't specifically recall one way or the other?

12 A. Well, I -- that sounds right, but I, I'm reluctant to say
13 that entirely because without the actual material in hand yet,
14 we might have been a little, been a little premature. That's
15 all. I'm not suggesting not, but that's all.

16 Q. So in terms of actually sending him out to conferences?

17 A. Yeah. I don't remember doing that.

18 Q. Okay. But certainly during your tenure, you were
19 assisting him in sending out communications to Iranian
20 scientists and scholars?

21 A. For him to do it, yes.

22 Q. Yes, okay.

23 I'd like to introduce Government Exhibit 132, which
24 is chapter 9. Does anyone have an objection to that?

25 MR. TRUMP: No.

Zach W. - Cross

262

1 BY MR. POLLACK:

2 Q. And if I could -- if we could go ahead and call that up on
3 the screen?

4 THE COURT: Well, it's a large exhibit. You'll have
5 to give a page number to make it make any sense.

6 MR. POLLACK: Specifically, I'm going to be referring
7 to page 200. Thank you, Your Honor.

8 THE COURT: All right, 132. No objection, obviously,
9 from the government. That's in.

10 (Government's Exhibit No. 132 was received in
11 evidence.)

12 BY MR. POLLACK:

13 Q. Now, Mr. W., you indicated that you did at some point
14 actually read chapter 9 of *State of War*, correct?

15 A. I don't -- yeah. I did when I was approached by a special
16 agent and asked if I'd read it. I said no, and they said,
17 "Well could you?"

18 And I, I did, I guess, yeah.

19 Q. Okay. And to be clear, when you say "special agent," that
20 would be the FBI special agent, Special Agent Hunt, correct?

21 A. Right.

22 Q. Who was investigating the leak to Mr. Risen, correct?

23 A. Correct.

24 Q. She talked to you and in the course of her investigation
25 told you about this chapter and encouraged you to actually read

Zach W. - Cross

263

1 it, correct?

2 A. Of her official duties, yes, encouraged me to read it.

3 Q. Okay. And what I'd like to do is refer you to the bottom
4 full paragraph on page 200.

5 THE COURT: And, ladies and gentlemen, the numbers
6 you see in the left-hand column do not exist in the actual
7 book. They've been put in there for ease of reference, so that
8 is one change from the book. All right.

9 BY MR. POLLACK:

10 Q. And this paragraph says that at the case officer's urging,
11 the Russian started sending messages to Iranian scientists,
12 scholars, and even Iranian diplomats stationed at the IAEA in
13 Vienna, and "IAEA" stands for the International Atomic Energy
14 Association; is that correct?

15 A. Um-hum.

16 THE COURT: I'm sorry, you have to say yes or no.

17 THE WITNESS: Yes.

18 BY MR. POLLACK:

19 Q. Which was headquartered in Vienna?

20 A. Which was headquartered in Vienna.

21 Q. "In his e-mails, he would explain that he had information
22 of great interest to Iran and that he was seeking a meeting
23 with someone who could hear him out. The messages were
24 designed to be playfully intriguing but not quite revealing.
25 Just enough to prompt a response."

Zach W. - Cross

264

1 A. Yes.

2 Q. And you are the case officer that is being referenced in
3 that paragraph, are you not?

4 MR. TRUMP: Objection, Your Honor.

5 THE COURT: I don't -- well --

6 MR. TRUMP: How does --

7 THE COURT: How would he know?

8 THE WITNESS: I don't know.

9 BY MR. POLLACK:

10 Q. Is that -- let me rephrase the question.

11 THE COURT: Sustained.

12 BY MR. POLLACK:

13 Q. Does that sound like a general description of what you
14 were working on with Merlin as his case officer?

15 A. To some degree, it does, but it seems a little bit more
16 detailed.

17 Q. Okay.

18 A. This seems a little bit more precise in its targeting than
19 we were at the phase when I was in the case, just saying.

20 Q. Okay. Now, at some -- well, let me strike that.

21 THE COURT: Do you want that on the screen? No, all
22 right.

23 BY MR. POLLACK:

24 Q. Well, if we can keep the chapter up, I'd like to go
25 back -- let me ask you a question first.

Zach W. - Cross

265

1 Thank you, Your Honor.

2 On your direct, Mr. Trump asked you about the plans
3 that were first available, the product that was first available
4 and given to Merlin at the meeting in San Francisco.

5 A. Yeah.

6 Q. And you referred to those plans in your testimony as plans
7 for a "firing set." Do you remember that?

8 A. I think so, yeah.

9 Q. The phrase "firing set," was that a phrase that you used
10 to describe the piece of equipment that we're talking about?

11 A. I believe so.

12 Q. And was that also a phrase that you heard Merlin use in
13 describing the plans after he saw them?

14 A. You know, I suppose so. I don't think we ever -- I don't,
15 I don't recall specifically. There is a really very short time
16 between the period on the 14th of November, when he sees the
17 device for the first time. We have one administrative meeting
18 together. We still don't have the answers yet on his
19 questions, and we have one more meeting.

20 So I'm reluctant to answer your question fully. It's
21 not because I don't want to say yes. I just don't -- it wasn't
22 how we responded to it.

23 Remember, when we spoke about things even together,
24 we didn't speak about things in a lot of specifics. We tried
25 to keep things fairly generic.

Zach W. - Cross

266

1 In the meeting that I had with, with Mr. Sterling
2 and, and Merlin, we were at a restaurant, so we're not going to
3 be talking about firing sets.

4 Q. Okay. Let me see if I understand that. You -- as your
5 tenure drew to a close, you had the meeting in San Francisco,
6 correct?

7 A. Yeah.

8 Q. Then you had a follow-up meeting just with Merlin,
9 correct?

10 A. Just with Merlin.

11 Q. And then you had a meeting with Merlin and Mr. Sterling?

12 A. Correct.

13 Q. And then you were done?

14 A. And then I was done.

15 Q. Okay. And given that relatively brief level of
16 interaction that you had with Merlin after the plans became
17 available, you can't recall precisely how Merlin referred to
18 them?

19 A. I can't.

20 Q. But "firing set" is a phrase that you would have used?

21 A. That's what we were talking about from the schematic, as I
22 recall.

23 Q. And now if we can go ahead and put 132 back up, and I'd
24 like to go to page 195, and if we can go to the last full
25 paragraph? It talks about the technical designs for a TB 480

Zach W. - Cross

267

1 high-voltage block, otherwise known as a "firing set."

2 And "firing set" is in quotation marks, correct?

3 A. Um-hum.

4 THE COURT: You have to say yes or no.

5 THE WITNESS: Yes. I'm so sorry.

6 BY MR. POLLACK:

7 Q. And immediately above that in the partial paragraph, it
8 talks about the blueprints, calls these the blueprints for a
9 nuclear bomb. Do you see that?

10 A. I do see that.

11 Q. And the book, this chapter variously refers to them as the
12 blueprints for a nuclear bomb, nuclear blueprints, or just
13 blueprints. Is that --

14 A. Okay. Yes.

15 Q. Do you recall yourself, did you ever refer to them as
16 blueprints?

17 A. I don't remember ever saying they were blueprints.

18 Q. Do you recall Merlin referring to them as blueprints?

19 A. No, I don't think so. I don't recall one way or another.

20 Q. Now, at some point before -- if we can call up, if the
21 government has no objection, Government Exhibit 7, which I do
22 not believe is presently in, but I move its admission.

23 THE COURT: Any objection? Again, it's a government
24 exhibit. It can't be, so it's in. All right.

25 (Government's Exhibit No. 7 was received in

Zach W. - Cross

268

1 evidence.)

2 MR. POLLACK: Okay. Thank you, Your Honor.

3 Q. This is a cable, Mr. W., that's written in February of
4 1998, correct?

5 A. Yes, it is.

6 Q. And that's during your tenure as the case officer for
7 Merlin, correct?

8 A. Yes, it is.

9 Q. That is before Mr. Sterling has a relationship with
10 Merlin, correct?

11 A. Correct.

12 Q. Okay. And if you'd look at the paragraph that is numbered
13 paragraph 2, the fourth line refers to firing set, correct?

14 A. Correct.

15 Q. The second-to-the-last line in paragraph 2 refers
16 to firing set, correct?

17 A. Okay. Yes, yes.

18 Q. And in paragraph 3, the third line refers to the firing
19 set experts, correct?

20 A. Correct.

21 Q. And two lines later, "make a workable firing set,"
22 correct?

23 A. Correct.

24 Q. And the second-to-last line from the bottom of the page
25 talks about a viable firing set, correct?

Zach W. - Cross

269

1 A. Correct.

2 Q. Paragraph 4 in the fourth line refers to a firing set,
3 correct?

4 A. Correct.

5 MR. POLLACK: And now if we could go to Exhibit 13?

6 THE COURT: All right, that's also in.

7 BY MR. POLLACK:

8 Q. Exhibit 13 is the cable that Mr. Trump discussed with you
9 that is the cable that talks about the meeting in San
10 Francisco, correct?

11 A. Correct.

12 Q. And you had indicated that you were the author of that
13 cable, correct?

14 A. Correct.

15 Q. And in this cable -- well, would Mr. Sterling have had
16 access to this cable?

17 A. Yes, he would have.

18 Q. This is really the first meeting during his tenure as the
19 case officer, right?

20 A. Correct.

21 Q. Okay. And in this cable, which is authored by you, in
22 paragraph 5 on the second page -- if we can go down a little
23 further in that paragraph?

24 Do you see where it says in the third line in the
25 paragraph that starts "Overall," you use the phrase "firing

Zach W. - Cross

270

1 set," correct?

2 A. Right.

3 Q. Okay. But if we go to the beginning of the cable,
4 paragraph 2, you talk about -- this is not -- yeah.

5 MR. MAC MAHON: One second.

6 BY MR. POLLACK:

7 Q. So in the first -- I'm sorry, in paragraph 2, on the third
8 line, it talks about "fire set plans," correct?

9 A. Right.

10 Q. Not "firing." "Fire," right?

11 A. Right.

12 Q. And in the next paragraph, paragraph 3, lines 3 and 4, the
13 group showed M the fire, fire set plans, not firing, correct?

14 A. Yes.

15 Q. And four lines later, again it says "fire set plans,"
16 correct?

17 A. Correct.

18 Q. Continuing on the next page, same paragraph, second
19 line, "fire set plans," right?

20 A. Um-hum.

21 THE COURT: Yes?

22 THE WITNESS: Yes. I'm so sorry. Yes.

23 BY MR. POLLACK:

24 Q. And finally, paragraph 5, fifth line from the bottom, it
25 says "fire set plans," correct?

Zach W. - Cross

271

1 A. Okay. Yes.

2 Q. So while you use the phrase "firing set" and you use it
3 once in this cable, repeatedly in this cable, the first cable
4 that deals with Mr. Sterling's involvement, the phrase that's
5 typically use is "fire set," correct?

6 A. Um-hum, yes. Yes.

7 Q. And -- by the way, in paragraph 6 --

8 A. Um --

9 THE COURT: There's no question pending.

10 BY MR. POLLACK:

11 Q. In paragraph 6 --

12 MR. TRUMP: Paragraph 6 of what?

13 MR. POLLACK: We're still on Exhibit 13.

14 Q. This talks about the, the social outing, the car trip to
15 Wine Country, correct?

16 A. Um-hum, yes.

17 Q. The fact that there was an outing to Wine Country, that
18 was something that would have been known not just to the people
19 who were at the meeting in San Francisco but also to people
20 back at headquarters that received this cable?

21 A. That would have been known to them after they received
22 this cable.

23 Q. Sure.

24 A. Yes. After they read the cable, yes.

25 Q. Sure. And anybody at any point who had access to this

Zach W. - Cross

272

1 cable after they read this would be aware of that fact, right?

2 A. Yes.

3 Q. Now, prior to that meeting in San Francisco, you were told
4 that Mr. Sterling was going to be taking over for you, correct,
5 that a decision had been made that he would be the next case
6 officer?

7 A. Yes.

8 Q. And it was conveyed to you, was it not, that there were
9 some concerns that Mr. Sterling's race might complicate his
10 handling of Merlin?

11 A. Well, the thought was we had no idea how Merlin would,
12 would respond. The agency didn't have an issue with it, but
13 the asset, we didn't, we didn't know. It turned out not to be
14 the case.

15 Q. Now, if we can go to Exhibit 14?

16 And this is the cable that was from headquarters that
17 was following up on some of the questions that Merlin raised in
18 San Francisco, correct?

19 A. Correct, yes.

20 Q. And again, Mr. Sterling is involved now in the program.
21 He would have been a recipient of this communication?

22 A. I'm not sure he would have been a recipient of it, but he
23 would have been aware of it, yeah, yeah.

24 Q. And in paragraph 2 of Exhibit 14, in the middle of the
25 paragraph, it talks about anonymous fire set designer, right?

Zach W. - Cross

273

1 A. Fire set.

2 Q. Not firing set, correct?

3 A. Correct.

4 Q. And the last line of that paragraph again talks about fire
5 set, correct?

6 A. I don't see it.

7 Yes.

8 Q. Okay. And paragraph 4, if we can go down, again same
9 exhibit, 14, talks about the fire set team, correct?

10 A. Correct.

11 Q. And then Government Exhibit 15 is the cable that you wrote
12 documenting the follow-up meeting, not the one that was just
13 you and Merlin but the one that was you, Merlin, and
14 Mr. Sterling, correct?

15 A. Correct.

16 Q. And if we can go to paragraph 3 of Exhibit 15, starting in
17 the second line, it talks about the fire set schematic,
18 correct?

19 A. Yes.

20 Q. Fourth line, fire set, correct?

21 A. Correct.

22 Q. Sixth line, fire set, correct?

23 A. Correct.

24 Q. If we can go to the next page of Exhibit 15, the
25 third-to-last line in that first partial paragraph, fire set,

Zach W. - Redirect

274

1 right?

2 A. Yes.

3 Q. And finally, paragraph 7 of the same cable about the
4 meeting with you, Merlin, and Mr. Sterling, middle of that
5 paragraph, again, fire set, correct?

6 A. Correct.

7 MR. POLLACK: Mr. W., I don't have any other
8 questions. Thank you.

9 THE COURT: Is there any redirect?

10 REDIRECT EXAMINATION

11 BY MR. TRUMP:

12 Q. Do you recall questions about Exhibit 6?

13 THE COURT: What question are you directing him to?

14 BY MR. TRUMP:

15 Q. Exhibit 6, do you have that in front of you?

16 A. I do.

17 Q. That was a cable to the New York office, correct?

18 A. Yes. Yes.

19 Q. And 7 was also a cable to the New York office?

20 A. Exhibit 7?

21 Q. Yes.

22 A. Yes.

23 Q. Same with Exhibit 8?

24 A. Yes.

25 Q. So when Mr. Sterling, the defendant, took over from you as

Zach W. - Redirect

275

1 the case officer, he has access to all these cables, correct?

2 A. Oh, yes.

3 Q. And he may have also had access to them at

4 Counterproliferation, correct?

5 A. Yes. We call it reading in, so you'd be, you'd be --
6 you'd do the background. You'd do the sort of your due
7 diligence.

8 MR. POLLACK: Your Honor, I'm going to move to strike
9 that unless there's a foundation as to whether he has actual
10 knowledge of that, as opposed to whether he's guessing.

11 THE COURT: Lay a foundation. How do you know that?

12 THE WITNESS: How do I know?

13 THE COURT: How do you know that he would have had
14 access to these cables from the Counterproliferation desk?

15 THE WITNESS: Well, when he was identified as the
16 officer, it is standard operating procedure for the officer who
17 is taking over to read the background of the case, just as I
18 had done when Laurie D. had done the case.

19 Now, I didn't read all the way back to the history of
20 the beginning of the case, but I certainly read sufficient
21 background. Where that was, I don't know, but the person would
22 have been given access to it for the very purpose of making
23 them capable of handling those responsibilities.

24 THE COURT: That's a sufficient foundation. There's
25 no objection there.

Zach W. - Redirect

276

1 BY MR. TRUMP:

2 Q. Either through his position at headquarters or when he
3 arrived at the New York office, these are cables that are part
4 of this limited access program in the cabinet and available to
5 the defendant?

6 A. Yes. They are the history of the case.

7 Q. Even the ones that predated his official tenure as case
8 officer?

9 A. Yes.

10 Q. And let's go to Exhibit 13. And just to illustrate this,
11 in the second paragraph, you used the term "fire set," right?

12 A. Yes.

13 Q. This is a cable you wrote, correct?

14 A. Yes.

15 Q. And you were shown some other cables you wrote in which
16 you used the term "firing set," right?

17 A. Yes.

18 Q. Were these terms interchangeable as far as you were
19 concerned?

20 A. As far as I was concerned, they were.

21 Q. And do you know of any technical distinction between the
22 terminology "firing set" or "fire set"?

23 A. I don't know of any.

24 MR. TRUMP: The Court's indulgence?

25 THE COURT: Yes, sir.

Zach W. - Redirect

277

1 MR. TRUMP: I'll just check my notes for one second,
2 Your Honor.

3 Q. You were asked some questions about directing Merlin to do
4 things that brought him to the attention of the Iranians,
5 correct?

6 A. Yes, that was the goal.

7 Q. And that was -- the goal was to get the Iranians
8 interested in this guy who was a real-life Russian nuclear
9 engineer, correct?

10 A. Correct.

11 Q. But there was no attempt to make it known to the Iranians
12 that he was connected to the CIA?

13 A. No, there was no attempt to do that.

14 MR. TRUMP: That's all I have.

15 THE COURT: Any recross?

16 MR. POLLACK: No, Your Honor.

17 THE COURT: All right, I assume no one's going to
18 call Mr. W. again in the trial; is that correct?

19 MR. TRUMP: I certainly hope not.

20 THE COURT: All right. Then, sir, you're excused as
21 a witness. Thank you for your testimony.

22 THE WITNESS: Thank you very much.

23 THE COURT: You may leave.

24 (Witness excused.)

25 THE COURT: And, ladies and gentlemen, you've been

1 very patient as a jury. I normally give my jurors more breaks
2 than you had. We ran a little bit out of sync in part because
3 of the logistics, but I'm going to let you get 15 minutes
4 early, out a little bit earlier.

5 We need to start tomorrow morning at 9:30, and we
6 can't start until all 14 of you are here. I don't think we
7 have any weather issues tomorrow morning, and fortunately,
8 almost all of you live pretty near the courthouse, I don't have
9 people way out in the boonies this time, but if there is any
10 weather, please plan accordingly so that you're here on time.

11 And remember my cautions about do not do any
12 investigation about this case. You are going to get a copy of
13 chapter 9 as an exhibit to, so that you can read it for
14 yourselves when you're deliberating, but don't go out and try
15 to buy the book or download it or anything like that.

16 Just go home, get a good night's sleep, a little
17 exercise if you want, get your minds off the case so you come
18 back fresh tomorrow morning. I do recommend you may want to
19 bring sweaters or jackets with you. The temperature in the
20 courtroom varies dramatically, and I'd rather have it cool than
21 hot because you'll fall asleep if it's too hot, but I don't
22 want anybody getting sick. So anyway, thank you for your
23 attendance today.

24 We're going to stay in session. I have a few matters
25 to take up with counsel. Just leave your notebooks there.

1 We'll have everything back for you tomorrow morning. So 9:30
2 start tomorrow morning. Thank you.

3 (Jury out.)

4 THE COURT: Now, obviously, unlike most cases, you
5 can't leave all your exhibits in the courtroom. Anything
6 that's classified needs to be taken care of by Ms. Gunning and
7 her folks. We'll need to get it up here tomorrow morning, you
8 know, by, say, 9:20 at the latest so that we don't start late.

9 Mr. Pollack had one issue he wanted to raise after
10 the government's opening statement. Why don't you go put it on
11 the record right now.

12 MR. POLLACK: Yes, Your Honor. As I'd indicated
13 earlier, I wanted to preserve the issue that the government in
14 its opening statement did not establish -- even if everything
15 that they said in their opening statement they're able to
16 prove, did not establish venue for the charges, and that is a
17 basis, I believe, for a motion for a judgment of acquittal
18 prior to putting on any, any evidence. I don't expect the
19 Court to rule on that now, but I want to preserve the issue for
20 the record.

21 THE COURT: All right. You've made the point, but
22 again, I never rule on a motion like that. We're going to have
23 this case, you know, have the evidence presented, and you can
24 file your motions down the road.

25 But you've made the motion for the record, and that

1 is what it is. It puts the government on notice. At some
2 point, do some legal research on that issue, all right?

3 MR. POLLACK: Thank you, Your Honor.

4 THE COURT: Anything else that we need to address
5 tonight? For tomorrow morning, I understand that you will have
6 that first witness on, the short witness, you had indicated
7 earlier, right? Yes.

8 MR. OLSHAN: That's correct.

9 SPECIAL AGENT HUNT: Yes.

10 THE COURT: All right, that's fine. And I think the
11 system is working reasonably well with the witnesses. Again, I
12 want to make sure we have everybody here who we need, so if we
13 run -- if we move the pace a bit tomorrow and we get ahead of
14 your schedule, don't leave us without witnesses, all right? So
15 the burden is on the government to make sure you've got your
16 people lined up.

17 Anything else we need to address?

18 MR. OLSHAN: I just had a logistical question, Your
19 Honor.

20 THE COURT: Yes.

21 MR. OLSHAN: It is a bit tight back here in front of
22 the screen, so would it be possible maybe for us to put some of
23 the extra binders on the floor against the table so we can get
24 some of the clutter out of way, mainly for Mr. Francisco's
25 benefit?

1 THE COURT: I'm sorry about that. No, I think we're
2 going to leave things just as they are, but again, anything
3 that's classified can't stay in here overnight because the
4 courtroom is open to janitors and other folks who don't have
5 clearance, all right?

6 MR. OLSHAN: Just thought I'd ask. Thank you.

7 THE COURT: All right. All right, we'll recess court
8 for the evening.

9 (Recess from 5:49 p.m., until 9:30 a.m., January 14, 2015.)
10

11 CERTIFICATE OF THE REPORTER

12 I certify that the foregoing is a correct transcript of
13 the record of proceedings in the above-entitled matter.
14
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16 /s/

Anneliese J. Thomson
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